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**THE
COMMERCIAL LAWS OF THE WORLD**

VOLUME XVI

**BRITISH DOMINIONS AND PROTECTORATES
IN ASIA**

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AMERICAN EDITION

THE COMMERCIAL LAWS OF THE WORLD, EDITED BY
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THE COMMERCIAL LAWS OF THE WORLD

COMPRISING

THE MERCANTILE, BILLS OF EXCHANGE, BANKRUPTCY
AND MARITIME LAWS OF ALL CIVILISED NATIONS

TOGETHER WITH

COMMENTARIES ON CIVIL PROCEDURE,
CONSTITUTION OF THE COURTS, AND
TRADE CUSTOMS

IN THE ORIGINAL LANGUAGES INTERLEAVED
WITH AN ENGLISH TRANSLATION

CONTRIBUTED BY

NUMEROUS EMINENT SPECIALISTS OF ALL NATIONS

BRITISH EDITION

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THE COMMERCIAL LAW
OF
THE EMPIRE OF INDIA

BY

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THE COMMERCIAL LAW
OF
CEYLON, STRAITS SETTLEMENTS, FEDERATED
MALAY STATES, JOHORE, KEDAH, PERLIS, KE-
LANTAN, TRENGGANU, NORTH BORNEO, BRUNEI,
SARAWAK, HONGKONG, WEIHAIWEI, AND
CYPRUS

BY

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The Empire of India.

Historical Introduction.

The successive subjection of India to foreign rule is reflected in the Laws of India. These comprise the several systems of the Hindu Law, the Mahomedan Law and the British-Indian Law which are administered at present by the British Courts of Justice. The Portuguese Dutch and French Laws once in force in several parts of India are now abrogated or obsolete.

Hindu Law is the Native law of India; Mahomedan law came with the Mahomedan invasion and British-Indian law with the British occupation. British-Indian law is divisible into two parts: (i) English Law and (ii) Anglo-Indian Law. By English Law is meant the Laws of England introduced into British India by Charters or otherwise. The extent and mode of its introduction is discussed below. Anglo-Indian Law consists of (i) the Acts of the British Parliament passed subsequent to the date of the introduction of English Law into India by Charters, or otherwise, and specifically applicable to British India, and of (ii) the various Regulations and Acts of the Indian Legislatures.

The East India Company began by governing the Natives of India by Native Laws exclusively, and Englishmen by English laws, but the system broke down, necessitating legislation whereby great changes were introduced. At the present moment, in British India, the Hindus are governed by Hindu Law, and the Moslems by Mahomedan Law, and all others by Anglo-Indian Law and English Law in so far as the latter is retained, and not repealed or replaced by Anglo-Indian legislation. In cases not provided for by their respective personal laws even the Hindus and Moslems are governed by the English and Anglo-Indian Laws. Anglo-Indian law is the codified law of British India designed to regulate the relations of mankind. It supersedes the English law in all matters dealt with by Anglo-Indian Law. *Pro tanto* it repeals the English law. But unfortunately Anglo-Indian legislation though comprehensive is not yet exhaustive, especially in the departments of mercantile transactions. For this reason English law still constitutes the chief source of law to fill up the gap in the codified law of British India. This is specially so in mercantile contracts.

It may not be amiss to observe that there are a few communities in India like the Borahs and Khojas who are governed, partly by Hindu Law and partly by Mahomedan Law. The reason is that, though these communities abandoned the faith of their fathers and embraced Islamism, they still tenaciously clung to the laws of their Hindu ancestors. The result is that in cases of intestacy, succession is regulated by the Hindu rules of devolution of property. For this reason a Khoja, in a recent case, was juridically described by Mr. Justice Russell as a live Moslem, but a dead Hindu. These intricacies, however, need not trouble the student of the Commercial Law of British India, for in this department of Law, both the Hindu and Mahomedan laws are practically negligible. In reality the Hindus now retain only the Hindu law of marriage, of adoption and of the joint-family, of partition, and of succession. Mahomedans retain the law of marriage, of testamentary and intestate succession, and of *Wakf* (Charitable and quasi-religious trust). As to Contracts there is very little in Hindu or Mahomedan law relating to the law of Contract which is now in force, as their personal laws are in these respects practically superseded by the Indian Contract Act. With these exceptions the Laws in force applicable to all are (i) the English law up to the date of its introduction by the Charters, (ii) the Acts of Parliament after that date expressly extended to British India, and (iii) the Regulations and Acts of the various Indian Legislatures as explained in the following parts.

Introduction of English Law into British India.

All are agreed that English Law to a certain extent was introduced into British India: but opinions differ as to the date and the mode of introduction. "That the English Law has, to a certain extent, been introduced into India, has been arrived at by two different lines of reasoning".

"The earlier of those was that adopted by Judicial authorities and attributes the introduction of English Law into British India to Charters granted by the Crown, and certain statutes under which some of those charters were granted, or whereby they were modified.

"The other is that adopted by the Indian Law Commissioners in their celebrated *Lex Loci* Report of the 31st October 1840.

"A third school (the Mofussil courts) would appear never to have acknowledged any general *lex loci* in British-India; and, in the absence of any positive law, to have generally though not invariably, held itself bound to follow the law of the domicile of origin of the parties but with this peculiarity, that it has applied English Law to all British subjects technically so called." (Per Westropp J. in *Navroji Behramji v. Rogers* 4 Bom: H. C. R. 1 at p. 18.)

The question discussed by the Commissioners was "what is the law to which all persons in British India for whom no special provision has been made, or who are not excepted on account of special circumstances, are subject; or, in other words, what is the *lex loci* of British India".

The Commissioners recognise the rule of European nations that Conquest does not extinguish the laws of the conquered country, but that they remain in full force till altered by the will of the Conqueror. But they contend that this rule must be qualified when the law of the conquered country is wholly inapplicable to the conquerors. They find some justification for this contention in the famous exception mentioned by Lord Coke in Calvin's case (7 Report 17), that by conquest of an "infidel Kingdom" its laws are *ipso facto* abrogated "for that they be not only against Christianity but against the law of God and of Nature contained in the decalogue". Lord Mansfield in *Campbell v. Hall* (Cowper R 204 at p. 209) stigmatized this exception as "absurd" and suggested that this view "in all probability arose from the mad enthusiasm of the Crusades".

The Commissioners however properly point out that the Hindu and Mahomedan laws "are so interwoven with religion as to be unfitted for persons professing a different faith." They therefore adopt the European doctrine but with a limitation. They hold that the Hindu and Mahomedan laws were not abrogated when India was subjugated by the King of Great Britain, and that they continued to bind the Hindus and Mahomedans but "that the Christian subjects of the British Crown and of other nations coming into British India, indeed all persons in British India not being Hindus or Mahomedans, are, independently of all Statutes, Charters, and Treaties, exempt from the operation of the Hindu and Mahomedan Laws."

They further proceed to show that there was no *lex loci* in India, and that neither the Hindu nor the Mahomedan law was in reality the *lex loci* of India. The argument briefly stated is this: — The Hindus, in consideration of the unison of law and religion "hold that, even in a country governed by their own princes their own law being the word of God addressed specially to the Hindu race is not the law of the place, but the law of the Hindu inhabitants; whereas the Mahomedans draw a quite different inference from the identity of their law and religion, and hold that their law, being the word of God addressed generally to all mankind, is not only the *lex loci* of countries subject to Mahomedan sovereigns, but ought to be the law of the whole world. In accordance with this principle, they, departing from the international doctrine of Europe, hold that upon the acquisition of any country by a Mahomedan Prince, their law becomes the *lex loci* not at the discretion of the prince, but as a matter of strict law and religion, and also that their law, when it has been once introduced, can never be lawfully superseded by any other system." (Per Westropp J. *Navroji Behramji v. Rogers* 4. Bom. H. C. R. 1 at p. 20.) As a matter of fact the Mahomedan law never supplanted the Hindu Law, which, therefore, still continued to govern the Hindus, — a practice sanctioned by the most liberal expounders of Mahomedan Law. "Whether, then, we consider the Mahomedan law as itself repudiating the international

doctrine of Christian Europe, of the ignominious position which it assigns to persons of a different faith, where the legal rights of Mussalmans are concerned or lastly the practice sanctioned by its most liberal expounders of having each class of subjects who are not Mussalmans to administer their own laws among themselves by Judges of their own, we must conclude that the doctrine of the unfitness of the Mahommedan law to be the *lex loci* of a country which has passed under the government of a Christian prince, rests upon a more solid foundation than the mad enthusiasm of the Crusades”.

Having shown that neither the Hindu nor the Mahommedan law is the *lex loci* of any part of British India, the Commissioners contend that the English law is the *lex loci*, asserting that, if it be not they are driven to conclude that there is none at all. They recoiled from a result so singular, remarking that “a country governed by one of the civilised nations of Modern Europe, and yet having no *lex loci*, would be a phenomenon without example in Jurisprudence.” They were ready to reject such a vacuum and to assert “that when any part of British India became a possession of the British Crown, there being in it no *lex loci*, but only two systems of rules for the government of two religious communities, the English law became *ipso jure* the *lex loci* and binding upon all persons who do not belong to either of those communities”. Then they proceed thus: “There is certainly no express authority for this doctrine, but if it be admitted that neither the Hindu nor Mahommedan Law can be considered as the *lex loci*, then British-India must, we think, be considered, with regard to all persons not Hindus or Mahommedans, as an uninhabited country colonised by British subjects. And then according to what is said to have been laid down by the Lords of the Privy Council, 2 Peere Williams 75, with the reasonable limitation assigned to it by Sir William Blackstone 1, 107, those British subjects must be held to have carried with them to this country so much of English law as is applicable to their situation, and so much of the English Law must be held to be, and to have been ever since the country became subject to the British Crown, the *lex loci* of British India”.

It will be observed that according to this view the Hindu and Mahommedan laws were unaffected, and continued in all their pristine vigour as the personal laws of these two religious communities. It follows that the English Law was introduced into British India only to the extent limited in its applicability to “all persons other than Hindoos and Mahommedans”. A similar view is taken in Master Stephen’s Report made in 1823, *Freeman v. Fairlie*, 1 Moore’s Indian Appeals 324. “The British treated India as a newly discovered country and used English law so far as it was capable of being applied for the Government of the Company’s servants, and other British or Christian settlers, and to leave the Mahommedan and Hindoo inhabitants to their own laws and customs”.

It is noteworthy that the English Courts came to the same conclusion even before England acquired Sovereignty in India. The Judgment in the case of the Indian Chief, 3 Robinson’s Admiralty Reports, runs as follows: “It is contended on this point that the King of Great Britain does not hold the British possessions in the East Indies in the rights of sovereignty, and therefore that the character of British merchants does not necessarily attach on foreigners locally resident there. But taking it that such a paramount sovereignty, on the part of the Moghul Princes, really and solidly exists and that Great Britain cannot be deemed to possess a sovereign right there; still it is to be remembered that wherever even a mere factory is founded in the Eastern parts of the World, European persons trading under the shelter and protection of those establishments are conceived to take their national character from that association under which they live and carry on commerce. It is the rule of the law of Nations, applying peculiarly to those countries, and is different from what prevails ordinarily in Europe and the Western parts of the world in which men take their present national character from the general character of the country in which they are resident, and this distinction arises from the nature and habit of the countries. In the Western parts of the World alien merchants mix in the society of natives, access and intermarriage are permitted; and they become incorporated to almost the full extent. But in the East, from the oldest times an immiscible character has been kept up; foreigners are not admitted into the general body and mass of the society of the Nation; they continue strangers and sojourners as all their fathers were, not acquiring any national character under the general sovereignty of the country, and not trading under any

recognized authority of their own original country, they have been held to derive their present character from that association or factory under whose protection they live and carry on their trade." (See the Indian Chief, 3 Robinson's Admiralty Reports, at pp. 28 and 29.)

"The Commissioners add, that, as British subjects were not originally subject to the Jurisdiction of the Mofussil Courts, and as the Indo-British race had not sprung up when those Courts were established it was not then of much importance to determine what was the *lex loci*, or whether there was any; but that the time had arrived when it was incumbent on Government to consider and decide those questions They recommended the passing of an Act declaring that so much of the law of England as was applicable to the situation of the people and not inconsistent with the Regulations and Acts of the Government of India, should be taken to be the law of the land throughout British India, except the places subject to the Jurisdiction of Her Majesty's Courts. They proposed to exempt from that law Hindus and Mahommedans and to exclude from it British Statutes passed since 3 Geo I, unless specially introduced into India by the Acts of the Government of India". (Per Westropp J., in *Navroji Behramji v. Rogers*, 4. Bom H. C. R. 1, at p. 22.)

Another and an earlier School arrived at practically the same result, but on a different line of reasoning. This school attributes the introduction of English Law into British India to Charters and Letters Patent, based upon British Statutes, and rejects the view of the Commissioners. In *Musleah v. Musleah* (Fulton's R. 423) Colville C. J. observed: "This conclusion of the Commissioners, in the absence of that declaratory Act which they recommended, can only be treated as a matter of opinion or speculation. It is inconsistent with the 9th Section of Regulation VII of 1832 . . . Nor could we, in the absence of that enactment . . . act upon it so as to declare that the contrary practice of the Courts of the East India Company is, having regard to their peculiar constitution, erroneous. There is certainly more legal authority for the conclusion that this Court, when the parties are neither Hindus nor Mahommedans, is both empowered and bound to administer English law to all persons and over all persons within its Jurisdiction. And the theory, which ascribes this modified introduction of English law into the Mofussil to the Charters and Letters Patent, in my opinion, derives additional weight from the 17th Section of 21 George III Chapter 70, which empowers the Court to hear and determine all suits against the inhabitants of Calcutta, and it is on the ground of inhabitancy, actual or constructive, of the parties, that the Court generally acquires Jurisdiction over immovable property held by others than British subjects in the Mofussil, in the same manner as is prescribed for that purpose in the said Charter and Letters Patent."

"It was impossible" declared Lord Lyndhurst in 1827 in the case of *Freeman v. Fairlie* "for the English to adopt the Mahommedan or Hindu laws, blended as they were with their respective religions, and that from 1601 downwards, it appears, by Charters and Acts of Parliament, that the English law had been considered as the law of the settlement as regarded British subjects."

The Charter of 43 Elizabeth (31st Dec. 1601) which created the Governor and Company of Merchants of London trading with the East Indies empowered the Governor and Company to make and enforce laws "for the good government of the same Company, of all factors, masters, mariners and other officers employed, or to be employed in any of their voyages and for the better advancement and continuance of the said trade and traffic." This Charter was confirmed by Letters Patent, James I (31st May 1609) and was followed by Charter of 20 James I (4th Feb. 1622). None of these Charters established any Courts of Justice. They do not even introduce English Law into India. The Charter of 20 James I merely empowered the Company "to chastise and correct all English persons residing in the Indies and committing misdemeanours either with martial law or otherwise." But Letters Patent of 13 Charles II (3rd April 1661) for the first time erected Courts of Justice in British India and directed them to apply the English Law by providing as follows: "That the Governor and his Council of the several and respective places where the said Company have or shall have any factories or places of trade within the said East Indies, may have power to judge all persons belonging to the said Governor and Company, or that shall live under them, in all causes, whether civil or criminal, according to the laws of this kingdom." This was an express introduction of English law but confined exclusively to the persons specified therein.

In 1669—70 Governor Aungier in pursuance of the Letters Patent founded two Courts of Judicature at Bombay but the Court of Directors in 1670—71 while approving Governor Aungier's plan of Civil Administration and recommending "trial by jury agreeably to the English law" declined to engage a Judge versed in Civil Law being "apprehensive that such a person might not obey orders of the President in Council" and resolved to send civil servants who had received education in Law without making the practice of law their only object.

This Charter was followed by Charter 35 Car. II (9th August 1683) which established a Court of Judicature consisting of "one person learned in the civil law, and two merchants" to be appointed by the Company with power to determine what may be briefly described as all Mercantile and Maritime cases, and trespasses, injuries and wrongs committed upon the high seas, "according to the rules of equity, and good conscience, and according to the laws and customs of Merchants". This was the Admiralty Court opened in Bombay. The reasons for this new court were recited in the Charter. Dr. John St. John was appointed the first Judge, but he took umbrage at having been strictly limited to maritime cases. He resigned and was succeeded by Mr. Vaux who "professed to administer the Law of England, a course disapproved by Sir Josiah Child, Governor of the London Company, who observed that the English laws were a heap of nonsense compiled by a few ignorant country gentlemen, and that his orders and not the laws of England, should be the rules by which Mr. Vaux ought to abide." (See Perry's *Oriental Cases* 573.) Various conforming and ratifying Charters were subsequently issued e. g. Charter 2 Jac. II (12th April 1686), 5 William and Mary (7th October 1693) and (11th Nov. 1693); and 10 William III (5th Sept. 1698). But by Letters Patent 13 George I (24th Sept. 1726) a Court of Record was constituted at Madras designated the Mayor's Court, consisting of a Mayor and nine Aldermen, and the Court was "authorized to try and hear and determine all civil suits, actions, and pleas between party and party . . . within the town of Madraspatnam (Madras) or within any of the factories subject or subordinate unto Fort St. George or to the Governor or President and the Council of Fort St. George", and to give Judgment according to "justice and right". Similar Mayor's Courts were established in Bombay and Fort William (Calcutta) with like authority. Of this Charter Peacock C. J. in the *Advocate-General of Bengal v. Rama Surnomoye Dossee*, 9. Moore Indian Appeals, 394 says: "It is a well recognized doctrine that, speaking generally, the first introduction of English Law into Calcutta was effected by the Charter of George I, by which in the year 1726 the Mayor's Court was established. It is unnecessary to cite authorities in support of that proposition."

But "Sir James Stephen inclines to the opinion that English criminal law was originally introduced to some extent by the Charter of 1661; but that the later Charters of 1726, 1753 and 1774 must be regarded as acts of legislative authority whereby it was re-introduced on three successive occasions, as it stood at the three dates mentioned." (Ilbert; *The Government of India*.) If so, the whole body of English Law up to 1774 would be introduced into British India. Regarding the Charter's direction to give judgment according to "justice and right" he holds that it "could have no other reasonable meaning than justice and right according to the laws of England so far as they regulated private rights between party and party. Such general words could not possibly refer to any law such as the Mortmain Act or the Alien Laws which had reference merely to some view of public policy supposed to be applicable to England, even though private rights might be affected by them. Still less could they be supposed to refer to the rights or revenues of the Crown, depending upon prerogative and which were wholly inapplicable to territory to which the sovereignty did not extend."

The leading case on the extent to which English law has been introduced into British India is the *Mayor of Lyons v. East India Company* (1836) 1 Moore Privy Council Cases 176. The Judicial Committee held that such parts of English law as were manifestly inapplicable to the circumstances of the settlement were not introduced. From these pronouncements it follows that not all the laws of England were introduced into British India but only such laws as were equitably applicable to India and that they were further limited in their operation to persons who were neither Hindus nor Moslems. It is clear that the Charter of 13 Geo. I, 1726 establishing Mayor's Courts did not expressly introduce English law into British India, but "justice and right" really meant justice and right according to Eng-

lish law. In moving the Bill which afterwards became the Indian Contract Act Mr. James J. Stephens observed: "In estimating the importance of the work now presented to the Council, it must be remembered that though 'Justice, Equity and good Conscience' are the law which Indian Judges are bound to administer, they do in point of fact resort to English law-books for their guidance on questions of this sort it is otherwise impossible unless furnished by specific rule as this Act." Practically therefore English law was introduced.

The Mayor and Aldermen having been expelled from India by France during the Anglo-French War, the East India Company surrendered its charter of 1726 for a new one granted by the Crown in the year 26 George II (8th January 1753) creating once again the Mayor's Court with the same powers as in the Charter of 1726 but with this variation that, suits or actions between the natives of India were to be "determined among themselves, unless both parties shall by consent submit the same to the determination of the Mayor's Court." By this Charter the natives of India were expressly exempted from the jurisdiction of the Courts, but according to Mr. Morley, in Bombay they were never actually excepted.

This Mayor's Court at Fort William was supplanted by the Supreme Court consisting of a Chief-Justice and three other Puisne Judges which the Crown was empowered to establish by the famous Act 3 Geo. III c. 63 in 1773, known as the Regulating Act. Accordingly a Supreme Court was established at Fort William, (Calcutta) by Charter 14 Geo. III 26th March 1774, but the Act was silent as to which law the Supreme Court was to administer. It was probably the English law. It was also not clear whether this law was to be administered to Europeans only or to Indians as well. It empowered the Supreme Court to try and determine suits and actions arising upon or concerning "any rights, titles, claims, or demands of, in or to any houses, lands, or other things real and personal in the several provinces of Bengal, Behar or Orissa or touching the possession or any interest or lien in or upon the same and all pleas real, personal or mixt" against the East India Company, the Corporation of Calcutta "and against any of our subjects" resident or who shall have resided in Bengal, Behar or Orissa. Judgment was to be "according to justice and right."

But so far as the Indian inhabitants of these Provinces were concerned jurisdiction was given only in the case of a "contract in *writing* where the Cause of action exceeded Rs. 500, and where the said inhabitant had agreed in the contract that in case of dispute, the matter should be heard and determined in the Supreme Court".

Important alterations and additions were subsequently made by the statutes 21 Geo. III c. 70, 24 Geo. III c. 25, 26 Geo. III c. 51 and 33 Geo. III c. 52, and the obscurity and indefiniteness of 1773 was cleared by the Amending Act of 1781 (21 Geo. III c. 70) which recognised and confirmed the principles and plan laid down by Warren Hastings in 1772 "with respect to Civil Rights". According to his plan "in all suits regarding marriage, inheritance and caste and other religious usages and institutions, the law of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentoos (Hindoos) shall be invariably adhered to."

These words of Warren Hastings were embodied in an Indian Regulation of 1780 issued by the Government of Bengal. A revised code of 1781 added the word "succession". The English Act of 1781 (21 Geo. III c. 70), practically reproduced it in these terms: "inheritance and succession to lands, rents and goods and all matters of contract and dealing between party and party shall be determined in the case of Mahomedans by the laws and usages of Mahomedans and in case of Gentoos by the laws and usages of the Gentoos, and where one only of the parties shall be a Mahomedan or Gentoos by the laws and usages of the defendant." But no such reservation was made in favour of other religious communities such as the Jews, Parsis, and Native Christians. Therefore Sir Henry Seton J. in *Musleah v. Musleah*, *Fulton R.* 423 at p. 441 said: "This Court (Supreme Court of Calcutta) has no Jurisdiction to administer the personal law of the parties except in the case of Hindus and Mahomedans; but on the ground that the parties and the property being alike subject to the Jurisdiction and the parties not being within the exception, the English law was the only law which the Court was competent to administer between them. For this purpose there can be no distinction between Jews and Armenians, neither being within the excepted classes."

The Crown was similarly authorized to establish Recorders' Courts at Madras and Bombay by 37 Geo. III c. 142, and by Charter 38 Geo. III (20th Feb. 1798)

such Recorders' Courts were established in Bombay and Madras with Jurisdiction akin to that of the Court of King's Bench in England and in terms very similar to those of 21 Geo. III c. 70 above mentioned.

The Recorder's Court at Madras was replaced by the Supreme Court in 1799, and the Recorder's Court at Bombay was replaced by the Supreme Court in 1823. The Charters creating these Supreme Courts reserved to the Hindus and Mohammedans their respective personal law in terms identical with those relating to the creation of the Recorder's Court, except that the words "and succession" were inserted after the word "inheritance".

These Supreme Courts at Calcutta, Madras and Bombay were eventually replaced in 1862 by the High Courts endowed with Civil, Criminal, Ecclesiastical, Admiralty and every kind of Jurisdiction. The High Courts were directed to administer the same laws as the Supreme Courts administered according to Justice, Equity and good Conscience "until otherwise provided for." The Native personal laws were still preserved, but this very important limitation "until otherwise provided for", subjected all Hindu, Mahomedan and English law to Anglo-Indian legislation. Hindu, Mahomedan and English law no doubt still continued in force, but only to the extent not provided for or not repealed by Anglo-Indian law. As a matter of fact Hindu and Mohammedan Laws of Inheritance and Succession are still practically left intact by the encroachments of Anglo-Indian legislation, but the Native law of Contracts is practically abrogated by the Indian Contract Act, which the High Courts are now bound to apply to Hindoos and Moslems as well. In cases, however, "not provided for by the Contract Act or other (Anglo-Indian) legislative enactments relating to particular contracts, it is incumbent upon the High Courts, in the exercise of their original jurisdiction, to apply the Hindu law of contract to Hindus, and the Mohammedan law of contract to Mohammedans". (Pollock, Indian Contract Act, notes on Section 1, 2d ed. p. 6.) As to English law, it naturally receded into the background as codification advanced. Codification is not yet complete especially in matters relating to mercantile affairs, for which English law continues to be the sole source of law for settling claims and disputes.

It will be observed that these Charters and Letters Patent were confined to the Presidency towns of Calcutta, Madras and Bombay and did not strictly apply to the Mofussil Courts, i. e. to Courts outside the Presidency Towns of Calcutta, Madras and Bombay. This gave rise to a third School known as the Mofussil Courts. "They (i. e. the Mofussil Courts) really recognized no *lex loci* in British India, but in the absence of any positive law, they generally though not invariably, felt themselves bound to follow the law of domicile of origin of the parties but with this peculiarity, that it has applied English law to all British subjects technically so called". But the Madras Regulation of 1793 directed the Judges in cases where no specific rule existed, to act according to justice, equity, and good conscience. This rule was adopted for Madras by the Madras Regulation II of 1802. In Bombay Sec. 26 of Regulation IV of 1827 provided: "The Law to be observed in the trial of Suits shall be Acts of Parliament and Regulations of Government applicable to the case; in the absence of all Acts and Regulations the usage of the country in which the suit arose, if none such appears, the law of the defendant and in the absence of specific law and usage, equity and good conscience alone."

Again Bengal Regulation VII of 1832 provided that whenever "in any Civil Suit the parties to such suit may be of different persuasions . . . the laws of those persuasions shall not be permitted to deprive such party or parties of any property to which, but for the operation of such laws, they should have been entitled. In all such cases the decisions shall be governed by the principles of justice, equity and good conscience, it being clearly understood, however, that the provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not contained by those principles." It is plain that this Regulation unlike the Bombay and Madras Regulations expressly excludes the operation of English law from the Mofussil. Nevertheless, the judges turned to English text-books for the principles of justice, equity and good conscience. Directly or indirectly, therefore, the law in the Mofussil for all practical purposes was the same as the law in the Towns of Bombay, Madras and Calcutta.

This is a brief history of the introduction of English law into British India by Statutes, Charters, and Letters Patent. A full exposition will be found in the judgment of the Court in the case of *Navroji Behramji v. Rogers*, 4 Bombay High Court Reports 1.

No reference is made above appertaining to the administration of criminal law. But it may be mentioned that in 1726 by Charter 13 Geo. I, Courts of Record in the nature of a Court of Oyer and Terminer, were constituted at Calcutta, Madras and Bombay with power to administer criminal justice "in the same or in the like manner as is used in that part of Great Britain called England" with the assistance of a grand and petty jury. In Bombay a general order of the East India Company in or about 1667 directed "that all cases of difference between English and Portugals should be decided by a jury of half English and half Portugals." In the Mofussil, i. e. outside the Presidency Towns, Mohammedan Law was enforced, which was modified by the English Regulations and Acts to bring the Mohammedan law in harmony with English notions of humanity and liberty. At a later date the jurisdiction of these Courts of Record was first transferred to the Supreme Court of Justice, and eventually to the High Courts. The substantive criminal law was to a certain extent consolidated by the statute of 9 Geo. IV c. 74, but the law remained in an indefinite and unsatisfactory condition till the Indian Penal Code was passed in 1860. As to criminal procedure provision was made by the Regulations of 1793 and subsequent Regulations, but all rules are now consolidated in the Criminal Procedure Code. At the present moment the Indian Penal Code is the criminal law of British India administered by various Courts according to the Criminal Procedure Code and the Indian Evidence Act, which Codes have entirely supplanted all native criminal law.

Legislation and Codification.

Apart from the wholesale introduction of English law into British India there has been much legislation for India. This legislation consists of Acts of Parliament expressly applied to India, and acts of the Indian Legislatures. Legislation may be divided into three periods. The first period is the period of Charters commencing from 1600 and ending with 1765. The second period extends from 1765 to 1858. The third period begins with the transfer of the Government of India from the Company to the Crown.

The power to make and enforce laws "for the good government of the same Company and of all factors, masters, marines and their officers employed or to be employed in any of their voyages and for the better advancement and continuance of the said trade and traffic" was conferred upon the East India Company by Charter 43 Elizabeth in 1601, with the proviso that such laws should "be reasonable and not contrary or repugnant to the laws, statutes and customs of this our Realm". Such powers of legislation circumscribed within the compass of reasonableness seemed to have been almost incidental to the creation of corporations by Charters in England. The powers conferred by the Charter of Elizabeth were obviously modelled on the powers of making by-laws exercised by English corporations.

This power was meant really for the internal management of the Company. The Royal Charter of 20 Car. II of 27th March 1668 was, however, much wider in its scope. It empowered the Company "to ordain, make, establish, and under their common seal to publish any laws, ordinances and constitutions whatever, for the good government and other use of the said fort and island of Bombay and the inhabitants thereof" and also "to impose pains, punishments and penalties, by fines etc. . . . for the observation of the same laws etc. so always as the said laws etc., pains etc., be consonant to reason and not repugnant, but as near as may be agreeable, to the laws of this our Realm of England". This was of course confined to the island of Bombay, but Charter 5 Wm. and Mary, dated 11th Nov. 1693 empowered the London Company to make laws generally provided always they were not to be "contrary or repugnant to the laws, statutes or customs" of England. In 1726, the Letters Patent of 13 George I (24th Sep. 1726) empowered the respective Governors and Councils of Madras, Bombay and Fort William, with the sanction of the Board of Directors of the East India Company to make bye-laws, rules and ordinances for the good government and regulation of the several Corporations thereby erected, and of the inhabitants of the said several towns,

places and factories and to impose reasonable pains and penalties upon offenders against them "provided that all such bye-laws, rules and ordinances, and all pains and penalties thereby to be imposed be agreeable to reason and not contrary to the Laws and Statutes of England". The Company surrendered this Charter in exchange for a new one in 1753 whereby the Company was again empowered to legislate "for the Corporations and Courts and inhabitants" but not "contrary to the laws and statutes of the Realm of England." The Regulating Act, of 1773 (13 Geo. III, c. 63), empowered the Governor-General in Council "to make and issue such rules ordinances, and regulations for the good order and civil government of the said united Company's settlement at Fort William and other factories subordinate or to be subordinate thereto as shall be deemed just and reasonable (such rules, ordinances and regulations not being repugnant to the laws of the realm) and to set impose and inflict and levy reasonable fines and forfeitures for the breach or non-observance of such rules, ordinances and regulations." It will be observed that in all these Charters the power to make laws was subjected to the controlling proviso that the laws enacted "shall be reasonable and not contrary or repugnant to the laws, statutes and customs of England."

In the language of Sir Charles Wood: "Similar regulations (Reg. of 1773) were applied in 1799 and 1801 to Madras and Bombay, and in 1803 they were extended to the North-West-Provinces. The territory of Delhi, however, which was nominally under the sovereignty of the Great Moghul, was administered by officers of the Government of India, and with such good effect that in 1815, when Lord Hastings acquired certain provinces, he determined that they should be administered in the same way by commissioners appointed by the Government. The same system has been applied to the Punjab, Scinde, Pegu, and the various acquisitions made in India since that date. The laws and regulations under which they are administered, are framed either by the Governor-General in Council or by the lieutenant-governors or commissioners, as the case may be, and approved by the Governor-General. This different mode of passing ordinances for the two classes of provinces constitutes the distinction between the regulation and the non-regulation provinces: the former being those subject to the old regulations, and the latter those which are administered in the somewhat irregular manner, which, as I have stated, commenced in 1815. There is much difference of opinion as to the legality of the regulations adopted under the latter system, and Sir Barnes Pencock has declared that they are illegal unless passed by the Legislative Council. The Act of 1833 (3 & 4 Will. c. 95) added to the Council of the Governor-General a member whose presence was necessary for the passing of all legislative measures, and put the whole of the then territory of India under that body, at the same time withdrawing from Madras and Bombay the power of making regulations. In that way the whole legislative power and authority of India were centralized in the Governor-General and Council with this additional member. So matters stood in 1853, but great complaints had emanated from other parts of India of the centralization of power at Calcutta..... In consequence of the general evidence to that effect I proposed in 1853 a measure (16 & 17 Vic. c. 95) adding to the Council of the Governor-General, when sitting to make laws and regulations, members from the different provinces of India, together with the chief Justice and another Judge of the Supreme Court of Bengal." Hitherto the Councils of the Governor-General were both Executive and Legislative, but the Act of 1853 separated the Legislative Council from the Executive. Therafter its functions were purely legislative. But it attempted to discharge functions other than those entrusted to it and constituted itself a body for the redress of grievances. Sir Lawrence Peel said of it: "It has no jurisdiction in the nature of that of a grand inquest of the Nation. Its functions are purely legislative, and are limited even in that respect. It is not an Anglo-Indian House of Commons for the redress of grievances, to refuse supplies and so forth." In attempting to go beyond its scope it fell into disfavour. The Indian Councils Act of 1861 (24 & 25 Vic. c. 67) terminated its existence. But it created an enlarged Council and impregnated it, for the first time, with a non-official but nominated element. It established Provincial Councils for Madras and Bombay and gave power to the Governor-General with the sanction of the Secretary of State to create a Council for the North-West Provinces, or the Punjab, or any other part of India which he might think desirable. Bombay and Madras were thereby once more endowed with legislative powers. Provincial Councils have been created accordingly for Bengal, United Provinces,

Eastern Bengal and Assam, Punjab and Burmah. The subjects of legislation for the Provincial Councils were limited so as to exclude subjects of Indian rather than local importance. But there was no clear line of demarcation of powers in these respects. The functions of these Councils, Imperial and Provincial, were purely legislative, but in 1892 (55 & 56 Vic. c. 14) they became partially administrative as they were permitted to discuss and criticise the Budget and ask questions concerning executive acts under such conditions and restrictions as might be prescribed. Lord Morley's Reforms (India Councils Act of 1909) will further corrupt their purely legislative functions. They are empowered to pass resolutions, which have not the force of law, but constitute opinions for the guidance of the Executive. The Act of 1892 enlarged the Councils but they were still nominative except that some of the nominees were recommended by various electorates which were constituted and empowered to make recommendations. Lord Morley has enlarged them still more and has also introduced an elective element, but the elected representatives are outnumbered by the officials on the Councils. In the Imperial Council the Officials who are the nominees of Government are in the majority, but in the Provincial Councils the Official and the Non-Official element exclusive of the Governors is equally balanced, but among the Non-Officials from 15 to 20 per cent are the nominees of Government, thereby securing a predominant voice to the nominated members against the elected representatives and ensuring for all practical purposes a standing official majority.

Powers of Councils.

The powers of the Council were greatly enlarged in 1833. Prior to that date acts of the Council were designated Regulations, but since that date they are known as Acts. Its present law-making powers are these: "The Governor-General in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and subject to the premises herein contained, to make laws and regulations for repealing, amending, altering any laws or regulations whatever now in force or hereafter to be in force in the Indian territories now under the dominion of His Majesty, and to make laws and regulations for all persons, whether British or Native, foreigners or others, and for all Courts of Justice whatever, and for all places and things whatever within the said territories, and for all servants of the Government of India within the dominions of princes and states in alliance with His Majesty; and the laws and regulations so to be made by the Governor-General in Council shall control and supersede any laws and regulations in any wise repugnant thereto, which shall have been made prior thereto by the Governors of the Presidencies of Fort St. George and Bombay in Council, or the Governor or Lieutenant-Governor in Council of any presidency or other territory for which a Council may be appointed, with power to make laws and regulations, under and by virtue of this Act: provided always that the said Governor-General in Council shall not have power of making law or regulations, which shall repeal or in any way affect any of the provisions of this Act." There are several other limitations imposed upon the Councils concerning the scope and subjects of legislation. The powers of the Provincial Councils are still more limited and subjected to the Veto of the Governor-General, but they are nevertheless extensive. In addition the Governor-General was empowered to legislate in case of emergency, but such laws were to remain in force for six months only.

The Acts of Provincial Councils further require the previous sanction of the Governor-General in certain cases. In this way an effort is made to attain a general uniformity in legislation, with a sufficient diversity for the differences of the various Provinces. The powers at present are the same as those conferred by the Act of 1861. With reference to the powers conferred by the Act of 1861, Lord Selborne said in the Privy Council in the case of *Reg v. Burah*, 3 App. Cas. 889 at p. 904 as follows: "The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large and of the same nature, as those of Parliament itself. The established Courts of Justice when a question arises whether the prescribed limits have been exceeded,

must of necessity determine that question Where plenary powers of legislation exist as to particular subjects, whether in an imperial or provincial legislature, they may (in their Lordships' judgment) be well exercised, either absolutely or conditionally."

"British India" says Dicey "is governed by a Legislative Council having very wide powers of legislation. The Council, or as it is technically expressed 'the Governor-General in Council', can pass laws as important as any Acts passed by the British Parliament. But the authority of the Council in the way of law-making is as completely subordinate to and as much dependent upon Acts of Parliament as is the power of the L. and N. W. Railway Co. to make bye-laws.

"The legislative powers of the Governor-General in Council arise from definite Parliamentary enactments. These Acts constitute what may be termed as regards the Legislative Councils, the Constitution of India. Now observe that under these Acts the Indian Council is in the strictest sense a non-sovereign legislative body, and this independently of the fact that the laws or regulations made by the Governor-General in Council can be annulled or disallowed by the Crown; and note that the position of the Council exhibits all the marks or notes of legislative subordination.

"The Courts in India may, when the occasion arises, pronounce upon the validity or constitutionality of laws made by the Indian Council. The Courts treat Acts passed by the Indian Council precisely in the same way in which the Queen's Bench treats the bye-laws of the Railway Company. If, on the other hand, the Indian Courts deem that the regulation is *ultra vires* or unconstitutional, they will refuse to give effect to it and treat it as void by giving judgment for the defendant on the basis of the regulation being invalid or having no legal existence." (Dicey, Law of the Constitution p. 93.)

The power of the Indian Courts to pronounce upon the validity of the laws of Indian Legislatures was recognised by the Privy Council in the case of *Reg v. Burah*, 3 App. Cas. 889. In that case a question arose whether the power conferred upon the Lieutenant-Governor of Bengal by the Governor-General in Council was valid. The Lieutenant-Governor was empowered to extend the Act passed by the Council to certain territories by notification and also to apply at discretion certain Acts of the Council. It was contended that this power and discretion amounted to delegation of the powers of legislation and was void upon the principle *delegatus non delegare potest*. But the Privy Council held that this did not amount to delegation but was only conditional legislation within the competence of the Council. And it went further and said that the Council was in no sense "an agent or delegate of the Imperial Parliament." The Imperial and Provincial Councils in India do empower railway companies and municipal corporations to make bye-laws. The bye-laws made under the powers conferred can scarcely be regarded as conditional legislation. In many cases the powers conferred upon the corporations, though circumscribed, are very wide. But bye-laws of railway companies and municipal corporations are constantly enforced in Courts of law and their validity has not been challenged upon the ground of delegation. In an old case it was successfully so challenged, but doubts were expressed upon the soundness of that judgment in the case of *Empress v. Burah* L. R. 3 Cal. 63.

Under the old powers many laws were passed till 1833. "At that date there were five different bodies of statute law in force in the (Indian) empire. First, there was the whole body of statute law existing so far as it was applicable, which was introduced by the Charter of Geo. I, and which applied, at least, to the Presidency Towns. Secondly English Acts subsequent to that date, which were expressly extended to any part of India. Thirdly the regulations of the Governor-General's Council which commence with the Revised Code of 1793 . . . and were continued down to the year 1834 Fourthly, the regulations of the Madras Council from 1802 to 1834 Fifthly, the Regulations of the Bombay Code which began with the Revised Code in 1827, comprising the results of 28 years previous legislation." (See Cowell, Tagore Law Lectures of 1872.) There was much chaos and indefiniteness. The authority and power from which these regulations emanated were ill defined. Codification became a pressing necessity and was wisely undertaken. The history of that Codification was thus epitomised by the Honourable Sir James Fitzjames Stephen in moving the Indian Contract Bill in the Governor-General's Legislative Council on the 9th of April 1872. He said:

"It (the Bill) was drafted originally by the Indian Law Commissioners and is still substantially their Bill, though it has been, to a certain extent, altered in substance, and also to a certain extent in form and arrangement. In order to enable the Council to appreciate its importance and its general position, it may perhaps, be permitted to make a few general remarks upon our legislation in India.

"The Bill now before the Council forms part of a scheme which has been under consideration and in process of execution for upwards of forty years — the scheme of passing a code of substantive law for India. I think that but few persons are aware, either of the nature and extent of the scheme itself, or of the extent to which it has been carried into execution. It may therefore be interesting, as it is certainly strictly relevant to the present measure, to say a few words on these topics.

"Legislation, as everybody knows, has been in active progress in this country ever since the year 1793, though I may observe, by the way, that the practice may be carried somewhat further back; but from the year 1793, to the present time, a considerable number, first of Regulations, and afterwards of Acts, has been passed in every successive year. I can by this time claim a considerable acquaintance with their contents, and, in order to show the position which this Bill occupies, I may make a few remarks upon them.

"The main subject, both of the Regulations and of the Acts, is procedure and current legislation. With a very few exceptions, they do not deal with substantive law. They establish Courts, civil and criminal; they deal at great length with their modes of proceeding; they lay down in minute detail the manner in which the revenue is to be assessed and collected, and provide for many subjects of minor and occasional interest. As to the laws which the Courts thus established are to administer, they are silent, or rather, they speak only in very vague and general terms. Thus, they provide, that in certain cases the Mohammedan Law, in certain other cases the Hindu Law, and in cases not specially provided for the 'law of justice, equity and good conscience' shall be followed. With regard to criminal law, they assume, though I do not think they assert in express terms, that the Mohammedan law is in force with certain modifications which were introduced into it, in order to make it harmonize with English conceptions of justice and humanity.

"It was felt long since that this state of things was not satisfactory, and it was likely to become less and less satisfactory as the administration of justice became more regular, and the spread of education and the growth of confidence in our system of government led to an increase in the number and activity of lawyers.

"We have heard a good deal lately in this Council of the evils of law and lawyers. I am far from being insensible to the evils of chicanery and quibbling, though I cannot think it wise and dignified to speak in terms of violent and indiscriminate reproach of a profession which always has existed and which of necessity must exist, in every Government which is not conducted by naked military force. If it is determined to govern according to law and not by arbitrary will of the ruler, the only way of avoiding quibbles, chicanery and all the evils arising from misplaced and selfish ingenuity, is to make the law which is administered so clear, short, precise and comprehensive, as to leave the least possible scope for the exercise of those unamiable qualities. Well-designed legislation is the possible remedy against those quibbles and chicanery. All the evils which are dreaded from legal practitioners can be averted in this manner and in no other. To try and avert them by leaving the law undefined and by entrusting the Judge with a wide discretion, is to try to put out the fire by pouring oil upon it... Shut the lawyer's mouth and you fall into the evils of arbitrary government... Whatever may be the case in other departments of things homoeopathy is the only system by which the malady of litigation and quibbling can be treated. The real antagonist of the pettifogger is the almost equally unpopular Legislative Department.

"The Government of India have been fully impressed with the soundness of those views for a great number of years and they have formed the basis of legislation ever since the renewal of the Company's Charter in 1832. The Act which renewed the Charter in that year provided that a fourth member of Council who was to be a barrister, should be appointed for the purpose of providing a body of substantive law for British India in concert with a Law Commission, which was appointed in India under the same Act. I need hardly observe that Lord Macaulay was the first person who held this office, or that the first draft of what is now the Indian Penal Code was the first-fruits of this appointment.

"The draft prepared by Lord Macaulay and his associates did not become law for nearly 24 years after the end of his term of office, but it was the first and by very much the most important instalment of this body of substantive law which was intended to be formed. It was afterwards considered that the work thus commenced might be more conveniently carried on by a commission sitting in England, who might prepare drafts of Bills which could afterwards be enacted as law by this Council. Such a commission was accordingly appointed in December 1861, and continued its labours till 1870, when it resigned, for reasons into which I need not now enter. The only draft prepared by this body which has as yet passed into law is the Indian Succession Act. If, as I hope, will be the case, the present Bill passes it will form the third instalment of substantive law which has been enacted in consequence of the policy adopted in 1832. It will, I take it, interest the Council and the public to know how much more legislation of this character will, in my opinion, be required before the codification of the law of British India can be said to be complete. As the subject is one to which I have given very great attention since I have been in India and as I shall not trouble them on many future occasions, your Lordship and the Council will perhaps indulge me with a few words on this subject.

"With reference to codification I would divide the law into 3 parts: 1. Current miscellaneous legislation; 2. Procedure; 3. Substantive law.

"Upon the codification of each of these branches of the law a different set of observations arise.

"By current legislation I mean such measures as are necessary to meet particular cases. All financial legislation is of this character. Acts relating to emigration, telegraphs and many other subjects might also be referred to. All that can be done with a view to codifying matter of this kind is to have all the Acts which relate to one subject consolidated into a single enactment. The various consolidated Acts which have recently been passed or introduced into the Council, have very nearly brought this state of things into the Indian Statute-Book. When the following consolidated measures have been passed — the Pleaders Bill, the Christian Marriage Bill, the Local Extent Bill, and the Inland Customs (Northern India) Bill — the current legislation of British India will be very nearly in a satisfactory state. Upon almost every subject the law will be found in a single Act. The few amending Acts that have been found necessary in the course of the last two years have been so drawn that the amended and the amending Acts might, in every case, be printed as one Act without the smallest difficulty or inconvenience. On this branch of the subject therefore little remains to be done.

"Under the head of Procedure I include all laws which regulate the proceedings and powers of the Courts of Justice and the assessment and collection of the land-revenue. As to the Courts of Justice the two Codes of Civil and Criminal Procedure, the Evidence Act, and the Limitation Act each reduce to a simple enactment the subject of which they treat

"With reference to the third branch of the subject I understand, by substantive law, those branches of the law which relate to and regulate the common relations of life — relations which continue unchanged under all circumstances.

"The main heads of Substantive law are: 1. Government; 2. Criminal law; 3. Laws relating to inheritance; 4. Laws relating to the relations of life — husband and wife, parent and child, master and servant, guardian and ward; 5. Laws relating to contract; 6. Laws relating to wrongs; 7. Laws relating to enjoyment of land.

"As to government, the law of this country is contained principally in the Acts of Parliament; of which the most important are the Government of India Act, the Indian Councils Act and some others which I need not mention they form a written Constitution plain and full enough for all practical purposes.

"The criminal law is codified in the Penal Code.

"The laws relating to inheritance are mostly Native laws which for obvious reasons we cannot touch.

"In so far as Native law and English law do not extend, the Succession Act X of 1865 may be regarded as supplying a code in this matter.

"The laws relating to the relations of life ... are in much the same state as the laws relating to inheritance. They are Native laws supplemented in some cases and more or less overruled in others by our legislation. I need hardly remind the Council of our various Marriage Acts, of the Abolition of Slavery, or of the Acts relating to Minors and the Courts of Wards.

"As to laws relating to wrongs there is a distinct and very important gap in our legislation. A good law of torts would I think be a great blessing to this country. It would enable the Legislature to curtail very greatly many of the provisions of the Penal Code, which are frequently called into play on the most trifling occasions to gratify private malice. (An Act was afterwards drafted by Pollock but never adopted. At present English principles are generally applied.)

"Finally there is the branch of law which lies between substantive law and procedure and which in England forms the main part of what by a strange misnomer, is called equity, as if there was any real or permanent distinction between law and equity. I know of no name in common use for the branch of law in question but it might perhaps be not quite inappropriately described as the law of Relief. Its principal branches are decrees for specific performance, decrees for reformation, and rescission of contracts and injunctions against various forms of wrongs. In one sense these things are matters of procedure but they also partake largely of the nature of substantive law.

"If we now review the topics which I have thus shortly run over, it will appear that, in regard to codification, the law of British India stands thus: —

"As regards current legislation it is nearly satisfactory, and may, with a little trouble be made quite satisfactory

"As regards procedure, the process of codification is complete, with the following exceptions: the Code of Civil Procedure requires re-enactment; a High Courts Act is wanted and the Revenue Procedure in the Central Provinces is undefined. A Bill for consolidating the Revenue Procedure of the North West Provinces is before the Council. An Oudh Bill is in preparation. (Since this was said the Civil Procedure Code has been re-enacted, and the Revenue Procedure in the Central Provinces is defined.)

"As regards substantive law, we shall have as much of it as will be wanted for a length of time, if this Act (i. e. the Indian Contract Act), a corresponding Act about wrongs, an Act about easements and an Act upon remedies are framed and passed into law. (The Specific Relief Act was passed in 1877 and the Indian Easements Act was passed in 1882.)

"When all this is done the statute law of India will be, after all, a very small matter. A young man coming out to India, who knew really well the Penal Code, the Succession Acts, the Contract Law, the two Procedure Codes, the Evidence Act, the Limitation Act, and the Acts of the province to which he was attached relating to land-revenue, would know more law than nineteen barristers out of twenty know when they are called to the Bar, and it would all be continued in a moderate sized octavo volume."

Mercantile Law.

Regarding the Indian Contract Act the Hon. Mr. Stephen said: "It is not and does not pretend to be a complete Code upon the branch of the law to which it relates. It consists of nine chapters, which deal with the following subjects: Contract in general under several heads; the Contract of the Sale of Goods; the Contract of Indemnity Guarantee; the Contract of Bailment; the Contract of Agency; and the Contract of Partnership. These contracts were chosen to form the subject of the Bill because they are of the commonest occurrence. The New York Code on the subject of obligations has been carefully examined with a view to this Act, and much of its provisions have been adopted. The principal matters contained in this Code which we have omitted are — Shipping contracts, Trusteeships, Insurance, Contracts by Carriers, Mortgages, Bills of Exchange, and the whole subject of Relief. Of these matters we did not think it desirable to deal with Shipping Contracts, because persons connected with them in India are very few, and it is desirable for obvious reasons that their contracts should be regulated by the law of England. We did not deal with Trusteeships, because the English law on that subject is obviously unsuitable to any country except England, and countries where the population is of English descent.

"We omitted the law relating to Bills of Exchange, because a Bill on that subject was framed some years ago by the Law Commissioners and was laid aside as unsuitable both to English merchants, who naturally wish to follow the law of England, and to Native merchants, who have customs of their own about Hundis which it is not desirable to interfere with. Relief might in my judgment form the

subjects of a separate Act, and is intermediate between procedure and substantive law. Mortgage is otherwise provided for. As to the law of Insurance, I have doubts whether it is a matter of much importance out of the Presidency towns, but a Bill on the subject was framed by the Indian Law Commissioners and can be taken up if it is thought desirable. As to Carriers it was intended to include the subject in the present Bill; but it was thought more desirable that it should be dealt with by a separate Bill, which I hope to introduce when the present matter is disposed of. From this it will appear that though incomplete, the Bill will probably suffice for a considerable time for the wants of the country."

Regarding the omissions specified above it may be mentioned that the Indian Legislature has dealt with them as follows:

I. Shipping Contracts. These are regulated by Act 10 of 1841, amended by Act II of 1850 brought up to 1911; Act I of 1859 is amended by Act 13 of 1876 and Act 5 of 1883, Act 13 of 1876, Act VII of 1880 amended by Act 14 of 1882, Act 6 of 1891 and Act 17 of 1891, Act 5 of 1883 amended by Act 10 of 1889 and Act 6 of 1891.

II. Trusteeships. The Indian Trustee Act XXVII of 1866, The Trustees and Mortgagees' Powers Act XXVIII of 1866, and The Indian Trusts Act II of 1882 deal with trusteeships and trusts.

III. Contracts by Carriers. These are the Carriers Act 3 of 1865 modified to 1903; The Indian Tramways Act II of 1886, The Indian Railways Act 9 of 1890, and Act 4 of 1905.

IV. Mortgage. The Transfer of Property Act IV of 1882 deals with mortgages of immoveable property and charges in Chapter IV.

V. Bills of Exchange. The Negotiable Instruments Act 26 of 1881 deals with Bills of Exchange.

VI. Relief. This is dealt with by the Specific Relief Act I of 1877 modified up to June 1891.

It will be perceived that the Anglo-Indian legislation and codification may fairly lay claim to have dealt with all the most important subjects affecting human transactions. The omissions relate chiefly to mercantile contracts. When no Indian provisions exist, English law must be resorted to, and applied according to justice, equity and good conscience.

It must be observed that apart from the Imperial and Provincial Legislative Councils in India the Governor-General has power to make Regulations and Ordinances, under certain circumstances. He has also power to make rules, laws and regulations for the non-regulation provinces. In that capacity he has made laws. The net result of legislation and the introduction of English law may be thus summarized.

"The law administered by the Courts of British India consists, so far as it is enacted law, of: 1. Such Acts of Parliament as extend, expressly or by implication, to British India. 2. The regulations made by the Governments of Madras, Bengal and Bombay before the coming into operation of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85). 3. The Acts passed by the Governor-General in Council under the Government of India Act, 1833, and subsequent statutes. 4. The Acts passed by the local legislatures of Madras, Bombay, Bengal, the North-Western Provinces and Oudh, the Punjab, and Burma, since their constitution under the Indian Councils Act, 1861 (24 & 25 Vic. c. 67). 5. The Regulations made by the Governor-General under the Government of India Act, 1870 (33 Vic. c. 3). 6. The Ordinances, if any, made by the Governor-General under S. 23 of the Indian Councils Act, 1861 (24 & 25 Vic. c. 67), and for the time being in force. To these may be added: 7. Orders in Council made by the Queen in Council and applying to India. 8. Statutory rules made under the authority of English Acts. 9. Rules, orders, regulations, by-laws, and notifications made under the authority of Indian Acts. 10. Rules, laws, and regulations made by the Governor-General or the Governor-General in Council for non-regulation provinces before 1861, and confirmed by S. 25 of the Indian Councils Act, 1861.

"These enactments are supplemented by such portions of the Hindu, Moham-medan, and other native laws and customs as are still in force, and by such rules or principles of European, mainly English, law as have been applied to the country either under the direction to act in accordance with justice, equity, and good conscience, or in other ways, and as have not been superseded by Indian Codification.

"Native law has been wholly superseded as to criminal law and procedure and as to civil procedure by the Indian Penal Code, the Indian Codes of Criminal and Civil Procedure, the Evidence Act, and other enactments, and has been largely superseded as to other matters by Anglo-Indian legislation, but still regulates, as personal law, most matters relating to family law, and to the law of succession and inheritance among Hindus, Mohammedans, and other natives of the country." (Ilbert, Government of India p. 125—6)

Bibliography.

1. Reports.

| | | |
|-----------------------------------|--|--------------------|
| Big. C. R. | Bignell's Calcutta Reports | 1 Vol. |
| Bour. C. R. | Bourke's Calcutta Reports | 2 " |
| Asp. | Aspinall's Maritime Cases (English) | 1 " |
| Buck | Buck's Bankruptcy (English) | 1 " |
| Chitty | Chitty, Bombay Court of Small Cases References | 1 " |
| De G. | De Gex, Bankruptcy (English) | 1 " |
| De G. & J. | De Gex & Jones, Bankruptcy (English) | 1 " |
| De G., M. & G. | De Gex, Macnaghten & Gordon, Bankruptcy (English) | 1 " |
| Dea. | Deacon's Bankruptcy (English) | 1 " |
| D. & C. | Deacon & Chitty, Bankruptcy (English) | 1 " |
| Mont. | Montagu, Bankruptcy | 1 " |
| Moo. (I. A.) | Moore's India Appeals | 14 " |
| Moo. (P. C. C.) | Moore's, Privy Council Cases | 15 " |
| Moo. (P. C. C.) N. S. | Moore's Privy Council Cases, New Series | 9 In continuation. |
| Mor. | Morrell's Bankruptcy, except parts 5 & 6 of vol. IX. | 10 |
| Morris (S. D. A.) | Morris, Sudder Dewanee Adawlut | 4 |
| P. O. C. | Perry's Oriental Cases | 1 |
| Rat. Bom. H. C. (U. C.) | Ratanlal's Bombay High Court Unreported Cases | 1 |

2. Law Reports.

| | | |
|----------------------------|---|---------|
| S. D. A. Cal. | Sudder Dewanee Adawlut Reports, Calcutta 1791—1848 | 7 Vol. |
| Do. Do. | Do. Do. Do. Do. Do. Do. Do. 1845—1860 | 19 " |
| Do. Do. | Do. Do. Do. Do. Do. Do. Do. Summary Cases 1836—1852 | 1 " |
| Do. Mad. | Do. Do. Do. Do. Do. Do. Madras 1826—1847 | 1 " |
| Do. Do. | Do. Do. Do. Do. Do. Do. Do. 1849—1862 | 3 " |
| Do. Bom. | Do. Do. Do. Do. Do. Do. Do. Bombay Borrodaile | 2 " |
| Do. Do. | Do. Do. Do. Do. Do. Do. Do. Do. Bellasis & Morris | 1 " |
| Do. Do. | Do. Do. Do. Do. Do. Do. Do. Do. Morris | 4 " |
| Do. Do. | Do. Do. Do. Do. Do. Do. Do. Do. Harrington | 3 " |
| Do. Do. | Do. Do. Do. Do. Do. Do. Do. Do. Selected Cases 1820 to 1840 | 1 " |
| Do. N. W. P. | Do. Do. Do. Do. Do. Do. Do. North West Province 1843—1846 | 1 " |
| Do. Do. | Do. Do. Do. Do. Do. Do. Do. Do. 1846—1860 | 14 " |
| Do. Do. (N. S.) | Do. Do. Do. Do. Do. Do. Do. Do. New Series 1861 to 1866 | 11 " |
| Do. N. W. P. | Do. Do. Do. Do. Do. Do. Do. Do. Selected Cases 1850—1857 | 2 " |
| N. A. R. Cal. | Nizamut Adawlut Reports, Calcutta 1851—1859 | 9 " |
| Do. Do. | Do. Do. Do. Do. Do. Do. Do. Do. Selected Reports 1805 to 1850 | 6 " |
| Do. N. W. P. | Do. Do. Do. Do. Do. Do. Do. North West Province 1851—1860 | 9 " |
| Do. Do. | Do. Do. Do. Do. Do. Do. Do. Do. Selected Reports 1861 to 1866 | 6 " |
| Cal. Bi-monthly R. | Calcutta Bi-monthly Reports | 1 " |
| C. L. R. | Calcutta Law Reporter | 13 Vol. |
| C. W. R. | Calcutta Weekly Reporter (Sutherland) | 26 " |
| I. J. (O. S.) | Indian Jurist, Old Series | 1 " |
| I. J. (N. S.) | Indian Jurist, New Series | 1 " |
| M. J. | Madras Jurist (Vol. 1 & Vols. 3 to 9) | 8 " |

2. Law Reports. (Continued.)

| | | | |
|----------------------------|--|---------|------------------|
| B. L. R. | Bengal Law Reports | 15 Vol. | |
| B. L. R. (F. B.) | Do. (Full Bench) | 1 | " |
| Bom. H. C. R. | Bombay High Court Reports | 12 | " |
| Bom. H. C. (P. J.) | Do. Printed Judgments | 29 | " |
| Mad. H. C. R. | Madras High Court Reports | 8 | " |
| N. W. P. H. C. | North West Provinces High Court Report | 7 | " |
| I. L. R. Cal. | Indian Law Reports, Calcutta | 35 Vol. | In continuation. |
| Do. Bom. | Do. Do. Do. Bombay | 32 | " Do. |
| Do. Mad. | Do. Do. Do. Madras | 31 | " Do. |
| Do. All. | Do. Do. Do. Allahabad | 30 | " Do. |
| Pun. R. | Punjab Records from 1866 | 42 | " Do. |
| All. W. N. | Allahabad Weekly Notes | 37 | " Do. |
| Bom. L. R. | Bombay Law Reporter | 10 | " Do. |
| C. W. N. | Calcutta Weekly Notes | 12 | " Do. |
| C. C. | Commercial Cases | 9 | " Do. |
| L. R. (I. A.) | Law Reports, Indian Appeals | 30 | " Do. |
| Do. (Sup.) | Law Reports, Indian Appeals (Supplementary) | 1 | " |
| P. C. J. (A. C.) | Privy Council Judgments of Cases appealed from the Adawlut Courts in India | 17 | " Do. |
| H. C. J. (A. S.) | Judgments of the High Court, Appellate Side from 1871—1873 & from 1874 | 34 | " Do. |
| Suth. P. C. J. | Sutherland's Privy Council Judgments | 1 | " Do. |

Works.**I. General Works.**

Legal Bibliography. Collection of English Statutes relating to India.
Generals Acts.

Contracts.

Pollock, F.: Indian Contract Act.
Cuningham and Shephard: Indian Contract Act.
Macpherson: Indian Contract Act.
Pearsons: On Agency; Tagore Law Lectures.

Limitation.

Bourke: On Limitation Act.
Mitra: On Limitation Act.
Rivaz: On Limitation Act.
Shephard: On Limitation Act.
Starling: On Limitation Act.
Thomson: On Limitation Act.

II. Commercial Law.**Joint Stock Companies.**

Russell, L.: On Companies.

Agents.

Russell, L.: Mercantile Agency.

Negotiable Instruments.

Chalmers: Negotiable Instruments.

Railways.

Russel and Bayley: Indian Railway Act.
Trevor: Railways in India.

Insolvency.

Griffith: Indian Insolvency Act (1894).
Millet and Clarke: Indian Insolvency Act (1873).

Miscellaneous.*1. Merchandise Marks Act.***Gilbert:** Merchandise Marks Act.**Gray:** Merchandise Marks Act.**Sebastian:** Trade marks.*2. Registration Act.***Desai:** Registration Act.**Rivaz:** Registration Act.*3. Stamp Act.***Baldio Prasad:** Stamp Act.**Murzban:** Stamp Act.**O'Donough:** Stamp Act.**Venkatrao:** Stamp Act.*4. Transfer of Property Act.***Gour:** Transfer of Property.**Michel:** Transfer of Property.**Sherpherd and Brown:** Transfer of Property.**Procedure.**

For the purposes of administration British India is divided into eight great Provinces viz. Bombay, Madras, Bengal, Eastern Bengal and Assam, North-West Provinces and Oudh, Punjab, Burmah and Central Provinces. For each Province there is a High Court. The High Courts of Bombay, Madras, Calcutta and Allehabad are chartered High Courts, i. e. created by Charters under an Act of Parliament. The rest are not created by Charters but are High Courts within the meaning of General Clauses Act 10 of 1897 section 3. High Courts exercise original jurisdiction within the towns of their respective Provinces and appellate jurisdiction over all the Courts in the Province. The High Courts are themselves subject to the control of the Judicial Committee of the Privy Council in England, which is the highest Court of Appeal for the Empire of India.

Each Province is divided into a number of Districts. There are in all nearly 250 Districts in British India. A District corresponds with the French Prefecture. In each District there is a District Court presided over by a District Judge, whose jurisdiction extends to all original suits in the District cognizable by Civil Courts. He is assisted by Joint Judges, or Assistant Judges or Additional Judges according to the requirements of each District. The District Court is the chief Court of Appeal in the District for the decisions of Subordinate Courts. In each District there are other Courts presided over by subordinate Judges of two classes. The jurisdiction of the second class is limited to Rs. 5000. In addition to them there are Small Cause Courts for the Presidency Towns and Districts. The Jurisdiction of the Small Cause Court is limited to Rs. 500 in the Districts and Rs. 2000 in the cities of Bombay, Madras and Calcutta. There are also other limitations to the jurisdiction of these Courts. These Courts cannot try suits on policies of insurance on sea-going vessels, or suits for compensation for infringement of a patent, copyright or trade-mark; suits for libel, slander, breach of promise, restitution of conjugal rights, divorce, adultery, suits for specific performance of a contract or to enforce a trust or for an injunction, suits for the recovery of property, foreclosure, redemption or any right or interest in immoveable property.

The Procedure of the Courts are regulated by the Code of Civil Procedure 1908 (Act V of 1908); but of the Courts of Small Causes by the Provincial Small Cause Courts Act 1887 (Act IX of 1887), and of the Courts established in the towns of Calcutta, Madras and Bombay by the Presidency Small Cause Courts Act 1882 (Act XV of 1882).

The Civil Procedure Code is divided into 8 parts and contains three important Schedules.

Part I. Jurisdiction of the Courts and Res Judicata.

The Courts have jurisdiction to try all suits of a civil nature, but are precluded from trying any suit or issue which comes within the principle of *res judicata*. Two suits cannot proceed simultaneously where the matter in issue is substantially between the same parties or between parties under whom they or any of them claim litigating under the same title.

The later suit must be stayed.

A foreign judgment is conclusive except where it was obtained by fraud or is opposed to natural justice, or is founded on an incorrect view of International Law or on a breach or disregard of the law of British India applicable to the case, or not given on the merits of the case, or not pronounced by a Court of competent jurisdiction, but competency is presumed unless the contrary appears on the record or is proved by evidence.

Place of Suing.

Suits must be instituted in the Court of the lowest grade competent to try it, and in the place where the subject-matter is situated in the case of immoveable property. Suits for compensation for wrongs to persons or moveables may be instituted at the option of the plaintiff either in the Court within whose jurisdiction the wrong was done, or within whose jurisdiction the defendant resides or works for gain, or carries on business, but all other suits must be instituted in the Court under whose jurisdiction the defendant resides or the cause of action arises.

Objections to jurisdiction must be taken at the earliest possible opportunity. The High Court and the District Court are vested with the general power of transfer and withdrawal from any Court subordinate to them. The Governor-General in Council has power to transfer suits from a High Court presided over by a single Judge to any other High Court upon a report made by the said Judge, on objection being taken by any party to the suit based on reasonable grounds.

Institution of Suits.

Every suit must be instituted by the presentation of a plaint, whereupon a summons will issue to the defendant to appear and answer the claim. Various rules are prescribed for the service of the summons on persons residing in another province or in foreign territory. The Courts have power to order delivery and answering of interrogatories, the admission of facts and documents and the discovery, inspection and production of documents, to issue summonses to witnesses to attend or produce documents, and compel their attendance under various penalties for default such as arresting, attaching property, or fining.

Judgment and Decree, Interest and Costs.

The Court, after the case has been heard, will pronounce judgment and on such judgment a decree will follow. The Court may order interest to be paid from date of suit to decree and from date of decree to date of payment and is endowed with discretion to award costs of and incident to the suit. The Rules regarding parties to the suit, frame of suit, pleadings, plaint, written statements, appearance of parties and consequence of non-appearance, examination of parties, and all matters connected with the institution, hearing and disposal of suits and execution of decrees are found in the Orders contained in Schedule I to the Code. Decrees are transferable subject to equities against the original decree-holder and are available against the legal representative of a deceased judgment-debtor to the extent of the property of the deceased come to his hands.

Part II. Execution of Decrees and Orders.

Executions of Decrees.

A decree may be executed either by the Court which passed it or the Court to which it is sent for execution. Decrees can be transferred to another Court or another Province for execution. Decrees may also be transferred for execution in the territories of a foreign Prince or State by a Court established or continued therein by the Governor-General in Council. All questions arising between the parties relating to the execution, discharge or satisfaction of the decree are to be determined by the Court executing the decree and not by a separate suit. Execution of decrees is barred after the expiration of twelve years, unless execution is prevented by force or fraud on the part of the judgment-debtor.

Procedure in execution.

Subject to such conditions and limitations as may be prescribed, the Court may on the application of the decree-holder order execution of the decree: a) By delivery of any property specifically decreed; b) By attachment and sale, or by sale without attachment of any property; c) By arrest and detention in prison; d) By appointing a receiver; e) In such manner as the nature of the relief granted may require.

Arrest and Detention.

A judgment-debtor may be arrested in execution of a decree at any hour and on any day and detained in the civil prison unless he applies to be declared an insolvent. If he does so and furnishes satisfactory security he must be released. The maximum period of detention is six months where the sum of money decreed exceeds Rs. 50 and in any other case it is six weeks. But release does not discharge him from his debt. During detention the judgment-debtor is entitled to subsistence allowance graduated according to rank, race and nationality at the expense of the persons on whose application he has been so detained. But no woman may be arrested or detained in execution of a decree for payment of money.

Attachment.

Subject to certain specified exceptions all property belonging to the judgment-debtor is liable to attachment. Private alienation of property after attachment is void against all claims enforceable under the attachment.

Sale.

Immoveable Property sold in execution of a decree vests in the purchaser from the time when the property is sold, and not from the time when the sale becomes absolute. No suit is maintainable against a purchaser on the ground of the purchase being on behalf of the plaintiff. The Local Government with the previous sanction of the Governor-General in Council may make rules respecting the sale of any interest in land in execution of decrees for the payment of money. With the like sanction Local Governments may prescribe rules for transferring to the Collector of a District (officer corresponding with a French Prefect) execution of decrees in cases in which the Court has ordered any immoveable property to be sold or any interest therein.

Distribution of Proceeds.

The proceeds of an execution sale are to be rateably distributed among all decree-holders who have applied for execution before the sale. If the property is mortgaged or encumbered the sale is effected for the discharge of the incumbrance; the proceeds are to be applied first, in defraying the expenses of the sale; secondly, in payment of mortgage-debt and thirdly in discharging monies due on subsequent incumbrances and lastly rateably among decree-holders who applied for the execution prior to the sale.

Resistance to Execution.

Resistance to execution, without just cause, for the possession of immoveable property renders the person resisting liable to detention in a civil prison for thirty days.

Part III. Incidental Proceedings.**Commissions.**

Courts may issue commissions to examine any person, to make a local investigation, to examine and adjust accounts or to make a partition. Commissions to examine witnesses may be issued to any Court (not a High Court) outside the Province, or a letter of request may issue to examine witnesses outside British India. The Court receiving the Commission is bound to execute the Commission and return it with the evidence, and the same must be done in the case of Commissions issued by any Court in the British Empire, or any Court of a country in alliance with His Majesty.

Part IV. Suits in particular cases.

Suits by or against the Government must be in the name of the Secretary of State for India, and can be instituted only after the expiration of two months from

notice. Execution may not be issued on any decree against the Government before the lapse of 3 months from the date of a report which the Court is required to make for the orders of Government at the end of the time fixed for the satisfaction of the decree.

Suits by Aliens and by or against Foreign or Native Rulers.

Alien friends may sue, but alien enemies cannot, unless they reside in British India and have obtained the permission of the Governor-General in Council. A Foreign State recognized by His Majesty or by the Governor-General in Council may sue to enforce a private right vested in the head of the State or any officer of the State.

Princes, Chiefs, Ambassadors and Envoys may be sued with the consent of the Governor-General in Council, but such personages may not be arrested, nor may the decree against them be executed against their property, without the consent of the Governor-General in Council. A Sovereign, Prince or Ruling Chief may sue and be sued in the name of his State.

Part V. Special Proceedings.

Suits may be referred to arbitration. A special case may with consent be stated in writing for the opinion of the Court.

Suits relating to Public Matters.

Suits relating to public nuisances or public charities must be instituted by the Advocate-General, or two or more persons with the written consent of the Advocate-General. In the case of a charitable trust, the persons must have an interest in the trust. Outside the Presidency-towns the powers of the Advocate-General may be exercised by the Collector or person appointed for this purpose by the Government.

Part VI. Supplemental Proceedings.

The Courts have power to issue a warrant of arrest and commit to prison if necessary, order attachment of property, or grant a temporary injunction and make such order as may seem just and convenient. The Court may award compensation for obtaining an arrest, attachment or injunction on insufficient grounds, or upon failure of the suit if it appears to the Court that there was no reasonable or probable ground for instituting the same.

Part VII. Appeals.

Appeal from Original Decrees.

First Appeal.

An appeal lies from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals. A preliminary decree must be appealed from, or the aggrieved party will be precluded from disputing its correctness in any appeal from the final decree.

Second Appeal.

An appeal lies to the High Court from every decree passed on appeal by any Court subordinate to it on any of the following grounds only: 1. The decision being contrary to law or to some usage having the force of law. 2. The decision having failed to determine a material issue of law or usage having the force of law. 3. A substantial error or defect in the procedure provided by the Civil Procedure Code 1908, or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits. No second appeal lies except on the aforesaid grounds. No second appeal lies in suits of the nature cognizable by Courts of Small Causes when the value of the subject-matter of the original suit does not exceed Rs. 500.

Appeals to the King in Council.

An appeal lies to the King in Council: a) From any decree or final order passed on appeal by a High Court or any other court of final appellate jurisdiction; b) From any decree or final order passed by a High Court in the exercise of original civil jurisdiction; and c) From any decree or order, when the case is certified to be a fit one for appeal to His Majesty in Council. Provided that in cases (a) and

(b) the amount or value of the subject-matter of the suit in the Court of first instance, and in dispute on appeal to His Majesty in Council be Rs. 10,000 or more, provided also that in the case of (a) some substantial question of law is involved, when the decree appealed from affirms the decision of the Court immediately below the affirming Court.

The Code does not in any way affect the right of His Majesty in Council to admit or reject appeals even where no such appeal lies under the Code, or the rules framed by the Judicial Committee of the Privy Council for the presentation of appeals.

Part VIII. Reference, Review and Revision.

Subject to certain conditions, any Court may state a case or refer the same for the opinion of the High Court.

A Court may review its own judgment on application where there is no appeal or where no appeal is preferred. The Court has power under certain circumstances to revise the decision of any Court subordinate to it even when no appeal lies.

Part IX. Miscellaneous.

In any Admiralty or Vice-Admiralty cause of salvage, towage, or collision, the Court whether it be exercising its original or its appellate jurisdiction may if it thinks fit, and must upon request of either party to the cause, summon to its assistance, in such manner as it may direct, or as may be prescribed two competent assessors; and such assessors must attend and assist accordingly.

Power of the Courts.

The Court has power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court, to correct clerical or arithmetical mistakes or errors arising from accidental slip or omission, and to amend any defect or error in any proceeding in a suit.

Schedules.

The first schedule is divided into fifty-one orders. Each order deals with a specific head. The second schedule deals with the arbitration of suits. The third schedule deals with execution of decrees by collectors. The fourth and fifth schedule deal with enactments amended or repealed.

The most important provisions of the first schedule are summarised hereunder. The contents of the various orders are printed below as Index to Orders. This suffices to indicate the nature of the provisions contained in the orders. The Civil Procedure Code must of course be consulted for more detailed information; but it is unnecessary to reproduce it here.

The First Schedule.

Order I. Parties to the Suit.

All persons may be joined in one suit as plaintiffs in whom any right of relief in respect of the same act or transaction, or same series of acts or transactions is alleged to exist, whether jointly, severally, or in the alternative, when, if such persons brought separate suits any common question of law or fact would arise. Under the same circumstances all persons may be joined as defendants against whom a right to relief is alleged to exist. With the leave of the court one person may sue or defend on behalf of all in the same interest where there are numerous persons. No suit may be defeated by reason of misjoinder or non-joinder of parties. Objections as to misjoinder or non-joinder must be taken at the earliest possible opportunity.

Order II. Frame of Suits.

Every suit must as far as practicable be framed so as to afford ground for final decision and to prevent further litigation. The suit must include the whole claim but the plaintiff is at liberty to relinquish any part of his claim.

The plaintiff may unite in the same suit several causes of action against the same defendant. In such a case the jurisdiction of the court depends upon the amount or value of the aggregate subject matters at the date of instituting the suit. But no cause of action may be joined with a suit for the recovery of immovable property without the leave of the court, subject to some exceptions. Objections to misjoinder of causes of action must be taken at the earliest possible opportunity.

Order III. Recognized Agents and Pleadors.

Appearance etc., may be in person or by recognized agent or pleader. Service of process on the pleader or recognized agent is sufficient and effectual.

Order VI. Pleadings.

Every pleading must state material facts concisely, but particulars (with dates and items if necessary) must be stated in the pleading in all cases in which the party pleading relies on misrepresentation, fraud, breach of trust, wilful default or undue influence. Conditions precedent, the performance or occurrence of which is intended to be contested, must be distinctly specified in the pleading. The effect of material documents should be stated. Every pleading must be signed by the party and his pleader (if any) but in case of the party's absence or other good reason it may be signed by a duly authorized person. Every pleading must be verified at the foot by the party or by one of the parties, who must specify what he verifies of his own knowledge, and what he verifies upon information.

Order VII. Plaint.

The plaint must contain the name of the court, name, description and place of residence of plaintiff and defendant, facts constituting the cause of action and showing jurisdiction of the court, relief sought, set-off or relinquishment, precise amount claimed in suits for money, description of immoveable property, defendant's interest and liability, and grounds of exemption from Limitation Law.

When a plaintiff sues upon a document in his power or possession, he must produce it in court when the plaint is presented and annex a list of other documents on which he relies as evidence, or it will not be received in evidence at the hearing without leave of the court.

Order VIII. Written statement and set-off.

The defendant may, and if so required by the court, must present a written statement of his defence. He must raise all such grounds of defence as would be likely to take the opposite party by surprise if not raised. Denials must not be evasive but specific. Particulars of a set-off must be given. This will have the effect of a plaint in cross-suit. Where a party fails to present a written statement required by the court, the court may pronounce judgment against him.

Order IX. Appearance of Parties and Consequence of Non-Appearance.

When neither party appears the suit may be dismissed, but the plaintiff may bring a fresh suit or the court may restore the suit on sufficient cause. If the plaintiff alone appears the court may proceed *ex parte* if a summons was served. If the defendant alone appears, the suit must be dismissed, unless the defendant admits the claim or any part of it. *Ex parte* decrees may be set aside on sufficient grounds.

Order X. Examination of Parties by the Court.**Order XI. Discovery and Inspection.**

Non-compliance with an order for discovery or order to answer interrogatories may lead to dismissal of the suit in the case of the plaintiff, and striking out of the defence in the case of the defendant.

Order XII. Admissions.

Any party to the suit may give notice admitting the whole or part of the case of any other party, or may call upon the other party to admit facts or documents. Failure to do so on being called upon entails the payment of the cost of proving the facts or documents by the defaulting party irrespective of the issue of the suit.

Order XIII. Production, Impounding and Return of Documents.

Issues are of two kinds (a) issues of fact (b) issues of law. The court frames issues. The court must try issues of law first, if the case or any part thereof may be disposed of on the issues of law only.

Order XIV. Adjournments.

The court may from time to time adjourn the hearing of the case for sufficient cause.

Index to Orders and to Second Schedule.***The First Schedule.*****Order I. Parties to Suits.****Rules.**

1. Who may be joined as plaintiffs.
2. Power of Court to order separate trials.
3. Who may be joined as defendants.
4. Court may give judgment for or against one or more of joint parties.
5. Defendant need not be interested in all the relief claimed.
6. Joinder of parties liable on same contract.
7. When plaintiff in doubt from whom redress is to be sought.
8. One person may sue or defend on behalf of all in same interest.
9. Misjoinder and nonjoinder.

10. Suit in name of wrong plaintiff.
Court may strike out or add parties.
Where defendant added, plaint to be amended.
11. Conduct of suit.
12. Appearance of one of several plaintiffs or defendants for others.
13. Objections as to nonjoinder or misjoinder.

Order II. Frame of Suit.

1. Frame of suit.
2. Suit to include the whole claim.
Relinquishment of part of claim.
Omission to sue for one of several reliefs.
3. Joinder of causes of action.
4. Only certain claims to be joined for recovery of immoveable property.
5. Claims by or against executor, administrator or heir.
6. Power of Court to order separate trials.
7. Objections as to misjoinder.

Order III. Recognized Agents and Pleadors.

1. Appearances, etc., may be in person, by recognized agent or by pleader.
2. Recognized agents.
3. Service of process on recognized agent.
4. Appointment of pleader.
5. Service of process on pleader.
6. Agent to accept service.
Appointment to be in writing and to be filed in Court.

Order IV. Institution of Suits.

1. Suit to be commenced by plaint.
2. Register of suits.

Order V. Issue and Service of Summons.

Issue of Summons.

1. Summons.
2. Copy or statement annexed to summons.
3. Court may order defendant or plaintiff to appear in person.
4. No party to be ordered to appear in person unless resident within certain limits.
5. Summons to be either to settle issues or for final disposal.
6. Fixing day for appearance of defendant.
7. Summons to order defendant to produce documents relied on by him.
8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.

Service of Summons.

9. Delivery of transmission of summons for service.
10. Mode of service.
11. Service on several defendants.
12. Service to be on defendant in person when practicable, or on his agent.
13. Service on agent by whom defendant carries on business.
14. Service on agent in charge in suits for immoveable property.
15. Where service may be on male member of defendant's family.
16. Person served to sign acknowledgment.
17. Procedure when defendant refuses to accept service, or cannot be found.
18. Endorsement of time and manner of service.
19. Examination of serving officer.
20. Substituted service.
Effect of substituted service.
Where service substituted, time for appearance to be fixed.
21. Service of summons where defendant resides within jurisdiction of another Court.
22. Service, within Presidency-towns and Rangoon, of summons issued by Courts outside.
23. Duty of Court to which summons is sent.
24. Service on defendant in prison.
25. Service where defendant resides out of British India and has no agent.
26. Service in foreign territory through Political Agent or Court.
27. Service on civil public officer or on servant of railway company or local authority.
28. Service on soldiers.
29. Duty of person to whom summons is delivered or sent for service.
30. Substitution of letter for summons.

Order VI. Pleadings generally.

1. Pleading.
2. Pleading to state material facts and not evidence.

3. Forms of pleading.
4. Particulars to be given where necessary.
5. Further and better statement, or particulars.
6. Condition precedent.
7. Departure.
8. Denial of contract.
9. Effect of document to be stated.
10. Malice, knowledge, etc.
11. Notice.
12. Implied contract, or relation.
13. Presumptions of law.
14. Pleading to be signed.
15. Verification of pleadings.
16. Striking out pleadings.
17. Amendment of pleadings.
18. Failure to amend after order.

Order VII. **Plaint.**

1. Particulars to be contained in plaint.
2. In money suits.
3. Where the subject-matter of the suit is immoveable property.
4. When plaintiff sues as representative.
5. Defendant's interest and liability to be shown.
6. Grounds of exemption from limitation law.
7. Relief to be specifically stated.
8. Relief founded on separate grounds.
9. Procedure on admitting plaint.
Concise statements.
10. Return of plaint.
Procedure on returning plaint.
11. Rejection of plaint.
12. Procedure on rejecting plaint.
13. Where rejection of plaint does not preclude presentation of fresh plaint.

Documents relied on in plaint.

14. Production of document on which plaintiff sues.
List of other documents.
15. Statement in case of documents not in his possession or power.
16. Suits on lost negotiable instruments.
17. Production of shop-book.
Original entry to be marked and returned.
18. Inadmissibility of document not produced when plaint filed.

Order VIII. **Written Statement and Set-off.**

1. Written statement.
2. New facts must be specially pleaded.
3. Denial to be specific.
4. Evasive denial.
5. Specific denial.
6. Particulars of set-off to be given in written statement.
Effect of set-off.
7. Defence or set-off founded on separate grounds.
8. New ground of defence.
9. Subsequent pleadings.
10. Procedure when party fails to present written statement called for by Court.

Order IX. **Appearance of Parties and Consequence of Non-appearance.**

1. Parties to appear on day fixed in summons for defendant to appear and answer.
2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.
3. Where neither party appears, suit to be dismissed.
4. Plaintiff may bring fresh suit or Court may restore suit to file.
5. Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.
6. Procedure when only plaintiff appears.
When summons duly served.
When summons not duly served.
When summons served, but not in due time.
7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

8. Procedure where defendant only appears.
9. Decree against plaintiff by default bars fresh suit.
10. Procedure in case of non-attendance of one or more of several plaintiffs.
11. Procedure in case of non-attendance of one or more of several defendants.
12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

Setting aside Decrees ex parte.

13. Setting aside decree *ex parte* against defendant.
14. No decree to be set aside without notice to opposite party.

Order X. Examination of Parties by the Court.

1. Ascertainment whether allegations in pleadings are admitted or denied.
2. Oral examination of party, or companion of party.
3. Substance of examination to be written.
4. Consequence of refusal or inability of pleader to answer.

Order XI. Discovery and Inspection.

1. Discovery by interrogatories.
2. Particular interrogatories to be submitted.
3. Costs of interrogatories.
4. Form of interrogatories.
5. Corporations.
6. Objections to interrogatories by answer.
7. Setting aside and striking out interrogatories.
8. Affidavit in answer, filing.
9. Form of affidavit in answer.
10. No exception to be taken.
11. Order to answer or answer further.
12. Application for discovery of documents.
13. Affidavit of documents.
14. Production of documents.
15. Inspection of documents referred to in pleading or affidavits.
16. Notice to produce.
17. Time for inspection when notice given.
18. Order for inspection.
19. Verified copies.
20. Premature discovery.
21. Non-compliance with order for discovery.
22. Using answers to interrogatories at trial.
23. Order to apply to minors.

Order XII. Admissions.

1. Notice of admission of case.
2. Notice to admit documents.
3. Form of notice.
4. Notice to admit facts.
5. Form of admissions.
6. Judgment on admissions.
7. Affidavit of signature.
8. Notice to produce documents.
9. Costs.

Order XIII. Production, Impounding and Return of Documents.

1. Documentary evidence to be produced at first hearing.
2. Effect of non-production of documents.
3. Rejection of irrelevant or inadmissible documents.
4. Endorsements on documents admitted in evidence.
5. Endorsements on copies of admitted entries in books, accounts and records.
6. Endorsements on documents rejected as inadmissible in evidence.
7. Recording of admitted and return of rejected documents.
8. Court may order any document to be impounded.
9. Return of admitted documents.
10. Court may send for papers from its own records or from other Courts.
11. Provisions as to documents applied to material objects.

Order XIV. Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.

1. Framing of issues.
2. Issues of law and of fact.
3. Materials from which issues may be framed.

4. Court may examine witnesses or documents before framing issues.
5. Power to amend, and strike out, issues.
6. Questions of fact or law may by agreement be stated in form of issues.
7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

Order XV. Disposal of the Suit at the first hearing.

1. Parties not at issue.
2. One of several defendants not at issue.
3. Parties at issue.
4. Failure to produce evidence.

Order XVI. Summoning and Attendance of Witnesses.

1. Summons to attend to give evidence or produce documents.
2. Expenses of witness to be paid into Court on applying for summons.
Experts.
Scale of expenses.
3. Tender of expenses to witness.
4. Procedure where insufficient sum paid in.
Expenses of witnesses detained more than one day.
5. Time, place and purpose of attendance to be specified in summons.
6. Summons to produce document.
7. Power to require persons present in Court to give evidence or produce document.
8. Summons how served.
9. Time for serving summons.
10. Procedure where witness fails to comply with summons.
11. If witness appears, attachment may be withdrawn.
12. Procedure if witness fails to appear.
13. Mode of attachment.
14. Court may of its own accord summon as witnesses strangers to suit.
15. Duty of persons summoned to give evidence or produce document.
16. When they may depart.
17. Application of rules 10 to 13.
18. Procedure where witness apprehended cannot give evidence or produce document.
19. No witness to be ordered to attend in person unless resident within certain limits.
20. Consequence of refusal of party to give evidence when called on by Court.
21. Rules as to witnesses to apply to parties summoned.

Order XVII. Adjournments.

1. Court may grant time and adjourn hearing.
Costs of adjournment.
2. Procedure if parties fail to appear on day fixed.
3. Court may proceed notwithstanding either party fails to produce evidence, etc.

Order XVIII. Hearing of the Suit and Examination of Witnesses.

1. Right to begin.
2. Statement and production of evidence.
3. Evidence where several issues.
4. Witnesses to be examined in open Court.
5. How evidence shall be taken in appealable cases.
6. When deposition to be interpreted.
7. Evidence under section 138.
8. Memorandum when evidence not taken down by Judge.
9. When evidence may be taken in English.
10. Any particular question and answer may be taken down.
11. Questions objected to and allowed by Court.
12. Remarks on demeanour of witnesses.
13. Memorandum of evidence in unappealable cases.
14. Judge unable to make such memorandum to record reasons of his inability.
15. Power to deal with evidence taken before another Judge.
16. Power to examine witness immediately.
17. Court may recall and examine witness.
18. Power of Court to inspect.

Order XIX. Affidavits.

1. Power to order any point to be proved by affidavit.
2. Power to order attendance of deponent for cross-examination.
3. Matters to which affidavits shall be confined.

Order XX. Judgment and Decree.

1. Judgment when pronounced.
2. Power to pronounce judgment written by Judge's predecessor.

3. Judgment to be signed.
4. Judgments of Small Cause Courts.
Judgments of other Courts.
5. Court to state its decision on each issue.
6. Contents of decree.
7. Date of decree.
8. Procedure where Judge has vacated office before signing decree.
9. Decree for recovery of immoveable property.
10. Decree for delivery of moveable property.
11. Decree may direct payment by instalments.
Order, after decree, for payment by instalments.
12. Decree for possession and mesne profits.
13. Decree in administration-suit.
14. Decree in pre-emption-suit.
15. Decree in suit for dissolution of partnership.
16. Decree in suit for account between principal and agent.
17. Special directions as to accounts.
18. Decree in suit for partition of property or separate possession of a share therein.
19. Decree when set-off is allowed.
Appeal from decree relating to set-off.
20. Certified copies of judgment and decree to be furnished.

Order XXI. Execution of Decrees and Orders.

Payment under Decree.

1. Modes of paying money under decree.
2. Payment out of Court to decree-holder.

Courts executing Decrees.

3. Lands situate in more than one jurisdiction.
4. Transfer to Court of Small Causes.
5. Mode of transfer.
6. Procedure where Court desires that its own decree shall be executed by another Court.
7. Court receiving copies of decree, etc., to file same without proof.
8. Execution of decree or order by Court to which it is sent.
9. Execution by High Court of decree transferred by other Court.

Application for execution.

10. Application for execution.
11. Oral application.
Written application.
12. Application for attachment of moveable property not in judgment-debtor's possession.
13. Application for attachment of immoveable property to contain certain particulars.
14. Power to require certified extract from Collector's register in certain cases.
15. Application for execution by joint decree-holder.
16. Application for execution by transferee of decree.
17. Procedure on receiving application for execution of decree.
18. Execution in case of cross-decrees.
19. Execution in case of cross-claims under same decree.
20. Cross-decrees and cross-claims in mortgage-suits.
21. Simultaneous execution.
22. Notice to show cause against execution in certain cases.
23. Procedure after issue of notice.

Process for execution.

24. Process for execution.
25. Endorsement on process.

Stay of execution.

26. When Court may stay execution.
Power to require security from, or impose conditions upon, judgment-debtor.
27. Liability of judgment-debtor discharged.
28. Order of Court which passed decree or of appellate Court to be binding upon Court applied to.
29. Stay of execution pending suit between decree holder and judgment-debtor.

Mode of execution.

30. Decree for payment of money.
31. Decree for specific moveable property.
32. Decree for specific performance for restitution of conjugal rights or for an injunction.
33. Discretion of Court in executing decrees for restitution of conjugal rights.

- 34. Decree for execution of document, or endorsement of negotiable instrument.
- 35. Decree for immoveable property.
- 36. Decree for delivery of immoveable property when in occupancy of tenant.

Arrest and detention in the civil prison.

- 37. Discretionary power to permit judgment-debtor to show cause against detention in prison.
- 38. Warrant for arrest to direct judgment-debtor to be brought up.
- 39. Subsistence-allowance.
- 40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

Attachment of property.

- 41. Examination of judgment-debtor as to his property.
- 42. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.
- 43. Attachment of moveable property, other than agricultural produce, in possession of judgment-debtor.
- 44. Attachment of agricultural produce.
- 45. Provisions as to agricultural produce under attachment.
- 46. Attachment of debt, share and other property not in possession of judgment-debtor.
- 47. Attachment of share in moveables.
- 48. Attachment of salary or allowances of public officer or servant of railway company or local authority.
- 49. Attachment of partnership property.
- 50. Execution of decree against firm.
- 51. Attachment of negotiable instruments.
- 52. Attachment of property in custody of Court or public officer.
- 53. Attachment of decrees.
- 54. Attachment of immoveable property.
- 55. Removal of attachment after satisfaction of decree.
- 56. Order for payment of coin or currency notes to party entitled under decree.
- 57. Determination of attachment.

Investigation of claims and objections.

- 58. Investigation of claims to, and objections to attachment of, attached property.
- Postponement of sale.
- 59. Evidence to be adduced by claimant.
- 60. Release of property from attachment.
- 61. Disallowance of claim to property attached.
- 62. Continuance of attachment subject to claim of incumbrancer.
- 63. Saving of suits to establish right to attached property.

Sale generally.

- 64. Power to order property attached to be sold and proceeds to be paid to person entitled.
- 65. Sales by whom conducted and how made.
- 66. Proclamation of sales by public auction.
- 67. Mode of making proclamation.
- 68. Time of sale.
- 69. Adjournment or stoppage of sale.
- 70. Saving of certain sales.
- 71. Defaulting purchaser answerable for loss on re-sale.
- 72. Decree-holder not to bid for or buy property without permission.
- Where decree-holder purchases, amount of decree may be taken as payment.
- 73. Restriction on bidding or purchase by officers.

Sale of moveable property.

- 74. Sale of agricultural produce.
- 75. Special provisions relating to growing crops.
- 76. Negotiable instruments and shares in corporations.
- 77. Sale by public auction.
- 78. Irregularity not to vitiate sale, but any person injured may sue.
- 79. Delivery of moveable property, debts and shares.
- 80. Transfer of negotiable instruments and shares.
- 81. Vesting order in case of other property.

Sale of immoveable property.

- 82. What Courts may order sales.
- 83. Postponement of sale to enable judgment-debtor to raise amount of decree.
- 84. Deposit by purchaser and re-sale on default.
- 85. Time for payment in full of purchase-money.

86. Procedure in default of payment.
87. Notification on re-sale.
88. Bid of co-sharer to have preference.
89. Application to set aside sale on deposit.
90. Application to set aside sale on ground of irregularity or fraud.
91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.
92. Sale when to become absolute or be set aside.
93. Return of purchase-money in certain cases.
94. Certificate to purchaser.
95. Delivery of property in occupancy of judgment-debtor.
96. Delivery of property in occupancy of tenant.

Resistance to delivery of possession to decree-holder or purchaser.

97. Resistance or obstruction to possession of immoveable property.
98. Resistance or obstruction by judgment-debtor.
99. Resistance or obstruction by *bonâ fide* claimant.
100. Dispossession by decree-holder or purchaser.
101. *Bonâ fide* claimant to be restored to possession.
102. Rules not applicable to transferee *lite pendente*.
103. Orders conclusive subject to regular suit.

Order XXII. Death, Marriage and Insolvency of Parties.

1. No abatement by party's death, if right to sue survives.
2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.
3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.
4. Procedure in case of death of one of several defendants or of sole defendant.
5. Determination of question as to legal representative.
6. No abatement by reason of death after hearing.
7. Suit not abated by marriage of female party.
8. When plaintiff's insolvency bars suit.
Procedure where assignee fails to continue suit or give security.
9. Effect of abatement or dismissal.
10. Procedure in case of assignment before final order in suit.
11. Application of Order to appeals.
12. Application of Order to proceedings.

Order XXIII. Withdrawal and Adjustment of Suits.

1. Withdrawal of suit or abandonment of part of claim.
2. Limitation law not affected by first suit.
3. Compromise of suit.
4. Proceedings in execution of decrees not affected.

Order XXIV. Payment into Court.

1. Deposit by defendant of amount in satisfaction of claim.
2. Notice of deposit.
3. Interest on deposit not allowed to plaintiff after notice.
4. Procedure where plaintiff accepts deposit as satisfaction in part.
Procedure where he accepts it as satisfaction in full.

Order XXV. Security for Costs.

1. When security for costs may be required from plaintiff.
Residence out of British India.
2. Effect of failure to furnish security.

Order XXVI. Commissions.

Commissions to examine witnesses.

1. Cases in which Court may issue commission to examine witness.
2. Order for commission.
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1. Presidency Small Cause Courts.

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Arbitration. Arbitration in Suits.

Parties to suit may apply for order of reference. 1. 1. Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference. 2. Every such application shall be in writing and shall state the matters ought to be referred.

Appointment of arbitrator. 2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

Order of reference. 3. 1. The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order. 2. Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit.

Where reference is to two or more, order to provide for difference of opinion. 4. 1. Where the reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators: a) By the appointment of an umpire; or b) By declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail; or c) By empowering the arbitrators to appoint an umpire; or d) Otherwise as may be agreed between the parties, or if they cannot agree, as the Court may determine. 2. Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.

Power of Court to appoint arbitrator in certain cases. 5. 1. In any of the following cases, namely: a) Where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or b) Where an arbitrator or umpire: i) dies, or ii) refuses or neglects to act or becomes incapable of acting, or iii) leaves British India in circumstances showing that he will probably not return at an early date, or c) Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire. 2. If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit.

Powers of arbitrator or umpire appointed under paragraph 4 or 5. 6. Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.

Summoning witnesses and default. 7. 1. The Court shall issue the same processes to the parties and witness whom the arbitrator or umpire desires to examine, as the Court may issue in suits tried before it. 2. Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

Extension of time for making award. 8. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

Where umpire may arbitrate in lieu of arbitrators. 9. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators: a) If they have allowed the appointed time to expire without making an award, or b) If they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

Award to be signed and filed. 10. Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Statement of special case by arbitrators or umpire. 11. Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award.

Power to modify or correct award. 12. The Court may, by order, modify or correct an award: a) Where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or b) Where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or c) Where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Order as to costs of arbitration. 13. The Court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

Where award or matter referred to arbitration may be remitted. 14. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrator or umpire, upon such terms as it thinks fit: a) Where the award has left undetermined any of the matters referred to arbitration, or where

it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred; b) Where the award is so indefinite as to be incapable of execution; c) Where an objection to the legality of the award is apparent upon the face of it.

Grounds for setting aside award. 15. 1. An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to reconsider it. But no award shall be set aside except on one of the following grounds, namely: a) Corruption or misconduct of the arbitrator or umpire; b) Either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire; c) The award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid. 2. Where an award becomes void or is set aside under clause 1, the Court shall make an order superseding the arbitration and in such case shall proceed with the suit.

Judgment to be according to award. 16. 1. Where the Court sees no cause to remit the award or any of the matters referred to arbitration for re-consideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award. 2. Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Order of reference on agreements to refer.

Application to file in Court agreement to refer to arbitration. 17. 1. Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court. 2. The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants. 3. On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed. 4. Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

Stay of suit where there is an agreement to refer to arbitration. 18. Where any party to any agreement to refer to arbitration, or any person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the Court to stay the suit; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit.

Provisions applicable to proceedings under paragraph 17. 19. The foregoing provisions, so far as they are consistent with any agreement filed under paragraph 17, shall be applicable to all proceedings under the order of reference made by the Court under that paragraph, and to the award and to the decree following thereon.

Arbitration without the intervention of a Court.

Filing award in matter referred to arbitration without intervention of Court. 20. 1. Where any matter has been referred to arbitration without the intervention

of a Court, and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court. 2. The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants. 3. The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

Filing and enforcement of such award. 21. 1. Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon, and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15 is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award. 2. Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

Exclusion of certain words in the Specific Relief Act, 1877. 22. The last thirty-seven words of section 21 of the Specific Relief Act, 1877, shall not apply to any agreement to refer to arbitration, or to any award, to which the provisions of this schedule apply.

Forms. 23. The forms set forth in the Appendix, with such variations as the circumstances of each case require, shall be issued for the respective purposes therein mentioned.

Appendix.

No. 1. Application for an Order of Reference.

(Title of suit.)

1. This suit is instituted for (*state nature of claim*).
2. The matter in difference between the parties is (*state matter of difference*).
3. The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration.
4. The applicants therefore apply for an order of reference.

A. B.
C. D.

Dated the day of 19..

Note. If the parties are agreed as to the arbitrators, it should be so stated.

No. 2. Order of Reference.

(Title of suit.)

Upon reading the application presented on the
day of 19 it is ordered that the following matter in difference arising in
this suit, namely:

.....
.....

be referred for determination to X and Y, or in case of their not agreeing then to the determination of Z, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the day of 19, and in case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing within months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

Liberty to apply.

Given under my hand and the seal of the Court, this day of 19 Judge.

No. 3. Order for Appointment of New Arbitrator.

(Title of suit.)

Whereas by order, dated the day of 19 [*state order of reference and death, refusal, etc., of arbitrator*], it is by consent ordered that Z be appointed in the place of X (*deceased, or as the case may be*) to act as arbitrator with Y, the surviving arbitrator, under the said order; and it is ordered that the award of the said arbitrators be made on or before the day of 19.

Given under my hand and the seal of the Court, this day of 19 Judge.

No. 4. Special Case.

(Title of suit.)

In the matter of an arbitration between A. B. of _____ and C. D. of _____
the following special case is stated for the opinion of the Court:

[Here state the facts concisely in numbered paragraphs.]

The questions of law for the opinion of the Court are:

First, whether
Secondly, whether

X.
Y.

Dated the _____ day of _____ 19 ____.

No. 5. Award.

(Title of suit.)

In the matter of an arbitration between A. B. of _____ and C. D. of _____ :
Whereas in pursuance of an order of reference made by the Court of _____
and dated the _____ day of _____ 19 ____ the following matter in
difference between A. B. and C. D., namely,
has been referred to us for determination.

Now we, having duly considered the matter referred to us, do hereby make our award
as follows:

We award:

1. that
2. that

Dated the _____ day of _____ 19 ____.

X.
Y.

Anglo-Indian Acts.

Preface.

The commercial law of British India is derived from three sources: 1. the English law, 2. Anglo-Indian Acts, and 3. the Native laws. The last are practically negligible. There are a few rules in force. Attention is called to these in the notes to the Indian Contract Act and the Negotiable Instruments Act XXVI of 1881. The relation existing between the English law and Anglo-Indian Acts has been fully discussed in the Historical Introduction. The Anglo-Indian Acts printed herein are the Acts which the Courts of Law enforce in British India and constitute primarily the rule of law for British India. But where the Acts are silent recourse is had to English laws so far as they are introduced into British India whether they be statute law or common law. Generally in the absence of Indian Acts or English law as introduced, the law to be administered is the law of justice, equity and good conscience. For this purpose European and chiefly English principles are naturally consulted. This is specially so in the department of mercantile law, for in this department Anglo-Indian Acts are rather silent. This is chiefly noticeable in the mercantile contracts of insurance, affreightment, bottomry and respondentia, and apprenticeship. The law of contracts with carriers and seamen and contracts of hiring and service is far from satisfactory. In these cases therefore the English law and principles will form the bases of decision. Moreover, the Indian Acts themselves so far as they exist, are modelled upon English principles. For practical purposes the commercial law of India is with slight variations the same as the commercial law of England. The variations will be found in the Anglo-Indian Acts.

The Anglo-Indian Acts do not deal with mercantile subjects according to the classification usually adopted by English text-writers. For example, the Indian Contract Act deals with such mercantile persons as partners and agents, but omits traders and joint stock companies. The last is taken up by the Indian Companies Act. Again the Indian Contract Act omits entirely the mercantile contracts of insurance, affreightment, bottomry and respondentia and apprenticeship and the mercantile remedy of bankruptcy. The following Table is prepared to enable the reader to ascertain whether any Anglo-Indian Act exists upon a given subject, and to facilitate reference to or comparison with the corresponding English law as expounded in the English section of this Work.

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1. Binding Apprentice Act XIX of 1850.
2. The Workman's Breach of Contract Act 1859 (Act XIII of 1859).

3. Disputes between Workmen & Employers Act 1860 (Act IX of 1860).
4. The Indian Contract Act 1872 (Act IX of 1872).

II. Company Acts.

1. The Indian Companies Act 1882 (Act VI of 1882).
2. The Indian Companies (Branch Registers) Act 1890 (Act IV of 1890).
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4. Rules of the High Courts of Bombay, Madras and Calcutta.
5. Special procedure for commercial suits being orders XXIX and XXX of schedule I under the C. P. Code (Act V of 1908).

III. Carriers, Post and Telegraph.

1. The Carriers Act 1865 (Act III of 1865).
2. The Inland Steam Vessels Act 1884 (Act VI of 1884).
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4. The Indian Telegraph Act 1885 (Act XIII of 1885).
5. The Indian Tramway Act 1886 (Act XI of 1886).
6. The Indian Ports Act 1889 (Act X of 1889).
7. The Indian Post Office Act 1898 (Act VI of 1898).
8. The Indian Railway Act 1890 (Act IX of 1890).
9. The Indian Railway Companies Act 1895 (Act X of 1895).
10. The Indian Railway Bond Act 1905 (Act IV of 1905).
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IV. Banks, Coinage and Paper Currency.

1. The Government Savings Bank Act 1873 (Act V of 1873).
2. The Native Coinage Act 1876 (Act IX of 1876).
3. The Presidency Banks Act 1876 (Act XI of 1876).
4. The Paper Currency Act 1882 (Act XX of 1882).
5. The Indian Securities Act 1886 (Act XIII of 1886).
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V. Negotiable Instruments and Bills of Exchange.

1. Act V of 1866. To amend commercial law of India and provide for vesting on assignment of policies of marine and fire insurance.
2. The Negotiable Instruments Act 1881 (Act XXVI of 1881).
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VI. Maritime Law.

1. The Registration of Ships Act 1841 (Act X of 1841).
2. The Bills of Lading Act 1856 (Act IX of 1856).
3. The Indian Merchant Shipping Act 1859 (Act I of 1859).
4. The Indian Merchant Seaman's Act 1876 (Act XIII of 1876).
5. The Indian Merchant Seaman's Act 1880 (Act VII of 1880).
6. The Indian Merchant Seaman's Act 1883 (Act V of 1883).
7. The Native Passengers' Ships Act 1887 (Act X of 1887).
8. The Indian Merchant Shipping Amendment Act 1906 (Act VI of 1906).

VII. Law of Bankruptcy.

1. The Indian Insolvency Rules Act 1898 (Act X of 1898).
2. The Provincial Insolvency Act 1907 (Act III of 1907).
3. The Presidency-Towns Insolvency Act 1909 (Act III of 1909).
4. Special Provisions for insolvent Agriculturists under Act 17 of 1879 §§ 24—31. The Agriculturist Relief Act.

VIII. Miscellaneous.

1. The Interest Act 1839 (Act XXXII of 1839).
2. The Indian Copyright Act 1847 (Act XX of 1847).
3. The Indian Fatal Accidents Act 1855 (Act XIII of 1855).
4. Interest Act 1855 (Act XXVIII of 1855).
5. The Married Woman's Property Act 1874 (Act III of 1874).
6. The Indian Specific Relief Act 1877 (Act I of 1877).
7. The Sea Customs Act 1878 (Act IV of 1878).
8. The Transfer of Property Act 1882 (Act IV of 1882).
9. The Indian Emigration Act 1883 (Act XXI of 1883).
10. The Merchandize Marks Act 1889 (Act IV of 1889).

11. The Arbitration Act 1889 (Act IX of 1889).
12. The Indian Tariff Act 1894 (Act VIII of 1894).
13. The Indian Stamp Act 1899 (Act II of 1899).
14. The Indian Limitation Act 1908 (Act IX of 1908).
15. The Indian Registration Act 1908 (Act XVI of 1908).

Act No. IX of 1872.

Passed by the Governor General of India in Council (25th April, 1872).

The Indian Contract Act, 1872.¹⁾

(As modified up to the 30th June, 1901.)

Preamble. Whereas it is expedient to define and amend certain parts of the law relating to contracts: It is hereby enacted as follows:

Preliminary.

Short title. Extent. Commencement. 1. This Act may be called the Indian Contract Act, 1872. It extends to the whole of British India; and it shall come into force on the first day of September, 1872.

Enactments repealed. The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof; but nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Interpretation clause. 2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context: a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal; b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise; c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee"; d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing,

¹⁾ This Act does not profess to deal exhaustively with the whole field of contract. In the absence of provisions appertaining to particular contracts, recourse must be had to English law, or Hindu law or Mahomedan law as the case may be. The introduction of English law into India, and the preservation of Hindu law to Hindoos and Mahomedan law to Mahomedans have been discussed in the historical introduction. The Indian Contract Act, however, has practically superseded the Native laws of contract. This is brought about in this way. The statutes of 1781 and 1797 directed the various Courts established in the Presidency Towns to determine disputes relating to all matters of contract and dealing between party and party, in the case of Mahomedans by the laws and usages of Mahomedans and in the case of Hindoos by the laws and usages of Hindoos, and where only one of the parties should be a Mahomedan or Hindoo by the laws and usages of the defendant. These Statutes have never been repealed. When the High Courts were established for the Presidency Towns, it was incumbent on them to apply "the same law or equity that would have been applied by the Supreme Court". The Native laws of Contract were thus preserved. But there was a proviso to the effect that this was to continue "until otherwise provided for". The Indian Contract Act is the provision now made by the Legislature. But as the Native laws are not abrogated it follows that such Native laws of contract as are not repealed by implication continue in force and will be applied by the High Court. As an instance the rule of Hindu law known as *Damdapat* according to which, interest exceeding the amount of principal cannot be recovered at any one time, may be mentioned. "This rule is still in force in the Bombay Presidency and in the presidency town of Calcutta, but it is not recognised outside that town, or in the Madras Presidency. The rule would, however, appear to be abrogated by the Transfer of Property Act, 1882, so far as regards interest on mortgages governed by that Act (see sections 86 and 88). . . . But such cases are very few and the native law of contract may, for all practical purposes, be regarded as having been superseded by the Contract Act and other enactments relating to particular contracts." (Pollock on the Indian Contract Act, 2d ed. p. 7.)

or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise; e) Every promise and every set of promises, forming the consideration for each other, is an agreement; f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises; g) An agreement not enforceable by law is said to be void; h) An agreement enforceable by law is a contract; i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract; j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

Chapter I. Of the Communication, Acceptance and Revocation of Proposals.

Communication, acceptance and revocation of proposals. 3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Communication when complete. 4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. The communication of an acceptance is complete: As against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor; As against the acceptor, when it comes to the knowledge of the proposer. The communication of a revocation is complete: As against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; As against the person to whom it is made, when it comes to his knowledge.

Illustrations.

a) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

b) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete: as against A, when the letter is posted; as against B, when the letter is received by A.

c) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Revocation of proposals and acceptances. 5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made. 6. A proposal is revoked: 1. By the communication of notice of revocation by the proposer to the other party; 2. By the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance; 3. By the failure of the acceptor to fulfil a condition precedent to acceptance; or 4. By the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute. 7. In order to convert a proposal into a promise, the acceptance must: 1. Be absolute and unqualified; 2. Be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be ac-

cepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions, or receiving consideration. 8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied. 9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Chapter II. Of Contracts, Voidable Contracts and Void Agreements.

What agreements are contracts. 10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Who are competent to contract. 11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting. 12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

"Consent" defined. 13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Free consent" defined. 14. Consent is said to be free when it is not caused by: 1. Coercion, as defined in section 15; or 2. Undue influence, as defined in section 16; or 3. Fraud, as defined in section 17; or 4. Misrepresentation, as defined in section 18; or 5. Mistake subject to the provisions of sections 20, 21 and 22. Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

"Coercion" defined. 15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement: *Explanation.* — It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Illustrations.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where the act was done.

"Undue influence" defined. 16. 1. A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one

of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. 2. In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another: a) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress. 3. Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other. Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872.

Illustrations.

a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appears to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

“Fraud” defined. 17. “Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract: 1. The suggestion, as to a fact, of that which is not true by one who does not believe it to be true; 2. The active concealment of a fact by one having knowledge or belief of the fact; 3. A promise made without any intention of performing it; 4. Any other act fitted to deceive; 5. Any such act or omission as the law specially declares to be fraudulent. *Explanation.* Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations.

a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse unsound.

c) B says to A: “If you do not deny it, I shall assume that the horse is sound.” A says nothing. Here, A's silence is equivalent to speech.

d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

“Misrepresentation” defined. 18. “Misrepresentation” means and includes: 1. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; 2. Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him; 3. Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Voidability of agreements without free consent. 19. When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true. *Except-*

tion. If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence. *Explanation.* A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

b) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not avoidable on account of A's misrepresentation.

c) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.

d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is avoidable at the option of A.

e) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Power to set aside contract induced by undue influence. 19A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

b) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

Agreement void where both parties are under mistake as to matter of fact. 20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. *Explanation.* An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

Effect of mistakes as to law. 21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Illustrations.

a) A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable.

b) A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France: the contract is voidable.

Contract caused by mistake of one party as to matter of fact. 22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

What considerations and objects are lawful and what not. 23. The consideration or object of an agreement is lawful, unless: It is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations.

a) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

b) A promises to pay B 1000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful considerations.

c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

d) A promises to maintain B's child and B promises to pay A 1000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

e) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

f) A promises to obtain for B an employment in the public service, and B promises to pay 1000 rupees to A. The agreement is void, as the consideration for it is unlawful.

g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal.

h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1000 rupees to A. The agreement is void, because it is immoral.

k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

Void Agreements.

Agreements void, if considerations and objects unlawful in part. 24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration.

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law. 25. An agreement made without consideration is void, unless: 1. It is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless 2. It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless 3. It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have

enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract. *Explanation.* 1. Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made. *Explanation.* 2. An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

- a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.
- b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.
- c) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.
- d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.
- e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.
- f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.
- g) A agrees to sell a horse worth Rs. 1000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage void. 26. Every agreement in restraint of the marriage of any person, other than a minor, is void.

Agreement in restraint of trade void. Saving of agreement not to carry on business of which good-will is sold; of agreement between partners prior to dissolution; or during continuance of partnership. 27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. *Exception 1.* One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein: Provided that such limits appear to the Court reasonable, regard being had to the nature of the business. *Exception 2.* Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception. *Exception 3.* Partners may agree that some one or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership.

Agreements in restraint of legal proceedings void. Saving of contract to refer to arbitration dispute that may arise. Suits barred by such contracts. Saving of contract to refer questions that have already arisen. 28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent. *Exception 1.* This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred. [*When such a contract has been made, a suit may be brought for its specific performance, and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.*]¹⁾ *Exception 2.* Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

¹⁾ The Clause in italics is repealed by the Specific Relief Act throughout British India, but is still in force in certain Scheduled Districts to which the Specific Relief Act (I of 1877), does not apply.

Agreements void for uncertainty. 29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Illustrations.

a) A agrees to sell to B "a hundred tons of oil." There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

c) A, who is a dealer in cocoanut-oil only, agrees to sell to B "one hundred tons of oil." The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

d) A agrees to sell to B "all the grain in my granary at Ramnagar." There is no uncertainty here to make the agreement void.

e) A agrees to sell to B "one thousand maunds of rice at a price to be fixed by C." As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

f) A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand." There is nothing to show which of the two prices was to be given. The agreement is void.

Agreements by way of wager void. Exception in favour of certain prizes for horse-racing. Section 294 A of the Indian Penal Code not affected. 30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race. Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply.

Chapter III. Of Contingent Contracts.

"Contingent contract" defined. 31. A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contracts contingent on an event happening. 32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Illustrations.

a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

c) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

Enforcement of contracts contingent on an event not happening. 33. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person. 34. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustration.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

When contracts become void which are contingent on happening of specified event within fixed time. When contracts may be enforced which are contingent on specified event not happening within fixed time. 35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible. Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

Illustrations.

a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Agreement contingent on impossible events void. 36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations.

a) A agrees to pay B 1000 rupees if two straight lines should enclose a space. The agreement is void.

b) A agrees to pay B 1000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

Chapter IV. Of the Performance of Contracts.

Contracts which must be performed.

Obligation of parties to contracts. 37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law. Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustrations.

a) A promises to deliver goods to B on a certain day on payment of Rs. 1000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1000 to A's representatives.

b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of refusal to accept offer of performance. 38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. Every such offer must fulfil the following conditions: 1. It must be unconditional; 2. It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do; 3. If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver. An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the first March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of refusal of party to perform promise wholly. 39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations.

a) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

b) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom Contracts must be performed.

Person by whom promise is to be performed. 40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

a) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

b) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from third person. 41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities. 42. When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death of any of them, his representative jointly with the survivor or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Any one of joint promisors may be compelled to perform. Each promisor may compel contribution. Sharing of loss by default in contribution. 43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any [one or more] of such joint promisors to perform the whole of the promise. Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. *Explanation.* Nothing in this section shall prevent a surety from recovering from his principal, payments made by surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

a) A, B and C jointly promise to pay D 3000 rupees. D may compel either A or B or C to pay him 3000 rupees.

b) A, B and C jointly promise to pay D the sum of 3000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1250 rupees from B.

c) A, B and C are under a joint promise to pay D 3000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1500 rupees from B.

d) A, B and C are under a joint promise to pay D 3000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect of release of one joint promisor. 44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the

joint promisor so released from responsibility to the other joint promisor or joint promisors.

Devolution of joint rights. 45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration.

A, in consideration of 5000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

Time and Place for Performance.

Time for performance of promise where no application is to be made and no time is specified. 46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. *Explanation.* The question 'what is a reasonable time' is, in each particular case, a question of fact.

Time and place for performance of promise where time is specified and no application to be made. 47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for performance on certain day to be at proper time and place. 48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business. *Explanation.* The question 'what is a proper time and place' is, in each particular case, a question of fact.

Place for performance of promise where no application to be made and no place fixed for performance. 49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promise. 50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Illustrations.

a) B owes A 2000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with, C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

b) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

c) A owes B 2000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

d) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform. 51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

- a) A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery. B need not pay for the goods, unless A is ready and willing to deliver them on payment.
- b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery. A need not deliver, unless B is ready and willing to pay the first instalment on delivery. B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promises. 52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

- a) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.
- b) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

Liability of party preventing event on which contract is to take effect. 53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises. 54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

- a) A hires B's ship to take in and convey, from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.
- b) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.
- c) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.
- d) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

Effect of failure to perform at fixed time, in contract in which time is essential. Effect of such failure when time is not essential. Effect of acceptance of performance at time other than that agreed upon. 55. When a party to a contract promises to

do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract. If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure. If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Agreement to do impossible act. Contract to do act afterwards becoming impossible or unlawful. Compensation for loss through non-performance of act known to be impossible or unlawful. 56. An agreement to do an act impossible in itself is void. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations.

- a) A agrees with B to discover treasure by magic. The agreement is void.
- b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.
- c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.
- d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.
- e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

Reciprocal promise to do things legal, and also other things illegal. 57. Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

Alternative promise, one branch being illegal. 58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Illustration.

A and B agree that A shall pay B 1000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Appropriation of Payments.

Application of payment where debt to be discharged is indicated. 59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations.

a) A owes B, among other debts, 1000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1000 rupees. The payment is to be applied to the discharge of the promissory note.

b) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

Application of payment where debt to be discharged is not indicated. 60. Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where neither party appropriates. 61. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Contracts which need not be performed.

Effect of novation, rescission and alteration of contract. 62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

b) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

c) A owes B 1000 rupees under a contract. B owes C 1000 rupees. B orders A to credit C with 1000 rupees in his books, but C does not assent to the arrangement. B still owes C 1000 rupees, and no new contract has been entered into.

Promisee may dispense with or remit performance of promise. 63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

b) A owes B 5000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2000 rupees paid at the time and place at which the 5000 rupees were payable. The whole debt is discharged.

c) A owes B 5000 rupees. C pays to B 1000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

d) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A without ascertaining the amount gives to B, and B, in satisfaction thereof, accepts the sum of 2000 rupees. This is a discharge of the whole debt, whatever may be its amount.

e) A owes B 2000 rupees and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a composition of eight annas in the rupee upon their respective demands. Payment to B of 1000 rupees is a discharge of B's demand.

Consequences of rescission of voidable contract. 64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Obligation of person who has received advantage under void agreement or contract that becomes void. 65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Illustrations.

a) A pays B 1000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1000 rupees.

b) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

c) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

d) A contracts to sing for B at a concert for 1000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1000 rupees paid in advance.

Mode of communicating or revoking rescission of voidable contract. 66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

Effect of neglect of promisee to afford promisor reasonable facilities for performance. 67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract if it is caused by such neglect or refusal.

Chapter V. Of certain Relations resembling those created by Contract.

Claim for necessities supplied to person incapable of contracting, or on his account. 68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

a) A supplies B, a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

b) A supplies the wife and children of B, a lunatic, with necessities suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying money due by another, in payment of which he is interested. 69. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

Obligation of person enjoying benefit of non-gratuitous act. 70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Illustrations.

a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Responsibility of finder of goods. 71. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion. 72. A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Illustrations.

a) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

Chapter VI. Of the Consequences of Breach of Contract.

Compensation for loss or damage caused by breach of contract. Compensation for failure to discharge obligation resembling those created by contract. 73. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss, or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract. *Explanation.* In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

b) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit

which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

j) A, having contracted with B to supply B with 1000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

l) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B in consequence of not receiving the money on that day is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

r) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Compensation for breach of contract where penalty stipulated for. 74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for. *Explanation.* A stipulation for increased interest from the date of default may be a stipulation by way of penalty. *Exception.* When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instru-

ment, to pay the whole sum mentioned therein. *Explanation.* A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

a) A contracts with B to pay B Rs. 1000, if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1000, as the Court considers reasonable.

b) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5000, as the Court considers reasonable.

c) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

d) A gives B a bond for the repayment of Rs. 1000 with interest at 12 per cent. at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

f) A undertakes to repay B a loan of Rs. 1000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

Party rightfully rescinding contract entitled to compensation. 75. A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

Chapter VII. Sale of Goods.

When Property in Goods sold passes.

"Goods" defined. 76. In this chapter, the word "goods" means and includes every kind of moveable property.

"Sale" defined. 77. "Sale" is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

Sale how effected. 78. Sale is effected by offer and acceptance of ascertained goods for a price, or of a price for ascertained goods, together with payment of the price or delivery of the goods; or with tender, part-payment, earnest or part-delivery; or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed. Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price or when the earnest is paid or when the whole or part of the goods is delivered. If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations.

a) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

b) A sends goods to B, with the request that he will buy them at a stated price if he approves of them or return them, if he does not approve of them. B retains the goods and informs A that he approves of them. The goods become B's when B retains them.

c) B offers A for his horse 1000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

d) B offers A for his horse 1000 rupees on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

e) B, on the first January, offers to A for a quantity of rice 2000 rupees, to be paid on the first March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

Transfer of ownership of thing sold, which has yet to be ascertained, made or finished. 79. Where there is a contract for the sale of a thing which has yet to be ascertained, made or finished, the ownership of the thing is not transferred to the buyer, until it is ascertained, made or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

Completion of sale of goods which the seller is to put into state in which buyer is to take them. 80. Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Illustration.

A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up and delivered.

Completion of sale of goods when seller has to do anything thereto in order to ascertain price. 81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

a) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

b) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's ground to B's place of deposit. Here nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

Completion of sale when goods are unascertained at date of contract. 82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.

Illustration.

A agrees to sell to B 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

Ascertainment of goods by subsequent appropriation. 83. Where the goods are not ascertained at the time of making the agreement for sale but goods answering the description in the agreement are subsequently appropriated by one party, for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Illustration.

A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B, the sugar becomes the property of B.

Ascertainment of goods by seller's selection. 84. Where the goods are not ascertained at the time of making the contract of sale, and by the terms of the contract the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and by his doing so the goods are ascertained.

Illustration.

B agrees with A to purchase of him, at a stated price to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

Transfer of ownership of moveable property, when sold together with immoveable. 85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Illustration.

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer to bear loss after goods have become his property. 86. When goods have become the property of the buyer, he must bear any loss from their destruction or injury.

Illustrations.

a) B offers, and A accepts, 100 rupees for a stack of firewood standing on A's premises, the firewood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the firewood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

b) A bids 1000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

Transfer of ownership of goods agreed to be sold while non-existent. 87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract, by the seller, or by the buyer with the seller's assent.

Illustrations.

a) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

b) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under this contract B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

c) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crop then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

Contract to sell and deliver, at a future day, goods not in seller's possession at date of contract. 88. A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Illustration.

A contracts, on the first January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid.

Determination of price not fixed by contract. 89. Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

Illustration.

B, living at Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

Delivery.

Delivery how made. 90. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Illustrations.

a) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

b) B, in England, orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

c) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown, in order that he may get the goods. This is a delivery.

d) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

e) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

f) A agrees to sell B five tons of oil, at 1000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

Effect of delivery to wharfinger or carrier. 91. A delivery to a wharfinger or carrier of the goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

Effect of part delivery. 92. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Illustrations.

a) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

b) A sells to B a stack of firewood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the firewood. This has not the legal effect of delivery of the whole.

c) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

Seller not bound to deliver until buyer applies for delivery. 93. In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Place of delivery. 94. In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale; and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

Seller's Lien.

Seller's lien. 95. Unless a contrary intention appears by the contract, a seller has a lien on sold goods as long as they remain in his possession and the price or any part of it remains unpaid.

Lien where payment to be made at a future day, but no time fixed for delivery.

"Insolvency" defined. 96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price. *Explanation.* A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent. A may retain the goods for the price.

Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession. 97. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day and does not then pay for them, the seller may retain the goods for the price.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

Seller's lien against subsequent buyer. 98. A seller in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

Stoppage in Transit.

Power of seller to stop in transit. 99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

When goods are to be deemed in transit. 100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

Illustrations.

a) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

b) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

c) B, who lives at Puna, orders goods of A at Bombay. A sends them to Puna by C, a carrier appointed by B. The goods arrive at Puna and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

d) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

e) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

Continuance of right of stoppage. 101. The seller's right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's reselling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

Cessation of right on assignment by buyer of bill of lading. 102. The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods, assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Illustrations.

a) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and, while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

b) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

Stoppage where bill of lading is pledged to secure specific advance. 103. Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Illustrations.

a) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure a specific advance of 5000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5000 rupees.

b) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure the sum of 5000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5000 rupees.

Stoppage how effected. 104. The seller may effect stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depositary in whose possession they are.

Notice of seller's claim. 105. Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

Right of seller on stoppage. 106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

Resale.

Resale on buyer's failure to perform. 107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, resell them, after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit which may occur on such resale.

Title.

Title conveyed by seller of goods to buyer. 108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases: *Exception 1.* When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods. *Exception 2.* If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them. *Exception 3.* When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents. In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

a) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

b) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

c) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

d) A, B and C are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bonâ fide*. The property in the cow is transferred to D.

e) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

f) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and before B rescinds the contract, sells the horse to C. The property is not transferred to C.

Warranty.

Seller's responsibility for badness of title. 109. If the buyer, or any person claiming under him, is, by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

Establishment of implied warranty of goodness or quality. 110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Warranty of soundness implied on sale of provisions. 111. On the sale of provisions, there is an implied warranty that they are sound.

Warranty of bulk implied on sale of goods by sample. 112. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.

Warranty implied where goods are sold as being of a certain denomination. 113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk. *Explanation.* But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

Illustrations.

a) A, at Calcutta, sells to B twelve bags of "waste silk," then on its way from Murshedabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

b) A buys, by sample and after having inspected the bulk, 100 bales of "Fair Bengal" cotton. The cotton proves not to be such as is known in the market as "Fair Bengal": there is a breach of warranty.

Warranty where goods ordered for a specified purpose. 114. Where goods have been ordered for a specified purpose, for which goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.

Illustration.

B orders of A, a copper manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

Warranty on sale of articles of well-known ascertained kind. 115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton: "Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

Seller when not responsible for latent defect. 116. In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

Illustration.

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware. A is not responsible for this.

Buyer's right on breach of warranty. 117. Where a specific article sold with a warranty has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Illustration.

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

Right of buyer on breach of warranty in respect of goods not ascertained. 118. Where there has been a contract, with a warranty, for the sale of goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may accept the goods or refuse to accept the goods when tendered, or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them: provided that during such time he exercises no other act of ownership over them than is necessary for the purpose of examination and trial. In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty: but, if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

a) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

b) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample; B afterwards uses two sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

c) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

Miscellaneous.

When buyer may refuse to accept, if goods not ordered are sent with goods ordered. 119. When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

Illustration.

A orders of B specific articles of china. B sends these articles to A in a hamper, with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

Effect of wrongful refusal to accept. 120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Right of seller as to rescission on failure of buyer to pay price at time fixed. 121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed unless it was stipulated by the contract that he should be so entitled.

Sale and transfer of lots sold by auction. 122. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Effect of use by seller of pretended biddings to raise price. 123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

Chapter VIII. Of Indemnity and Guarantee.

"Contract of indemnity" defined. 124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity".

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Rights of indemnity-holder when sued. 125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor: 1. all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies; 2. all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit; 3. all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

"Contract of guarantee", "surety", "principal debtor", and "creditor". 126. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

Consideration for guarantee. 127. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Illustrations.

a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

c) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

Surety's liability. 128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

"Continuing guarantee". 129. A guarantee which extends to a series of transactions is called a "continuing guarantee".

Illustrations.

a) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

b) A guarantees payment to B, a tea-dealer, to the amount of £ 100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £ 100, and C pays B for it. Afterwards B supplies C with tea to the value of £ 200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £ 100.

c) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee. 130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations.

a) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5000 rupees. B discounts bills for C to the extent of 2000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2000 rupees, on default of C.

b) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

Revocation of continuing guarantee by surety's death. 131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default. 132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

Discharge of surety by variance in terms of contract. 133. Any variance, made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations.

a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

d) A gives to C a continuing guarantee to the extent of 3000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

e) C contracts to lend B 5000 rupees on the 1st March. A guarantees repayment. C pays the 5000 rupees to B on the 1st January. A is discharged from his liability, as the contract has been varied inasmuch as C might sue B for the money before the 1st of March.

Discharge of surety by release or discharge of principal debtor. 134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

a) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

b) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

c) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor. 135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Surety not discharged when agreement made with third person to give time to principal debtor. 136. Where a contract to give time to the principal debtor

is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

Creditor's forbearance to sue does not discharge surety. 137. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

Release of one co-surety does not discharge others. 138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy. 139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations.

a) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

b) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A, as surety for B, together with a bill of sale of B's furniture which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

c) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

Rights of surety on payment or performance. 140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Surety's right to benefit of creditor's securities. 141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

a) C advances to B, his tenant, 2000 rupees on the guarantee of A. C has also a further security for the 2000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

b) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, withdraws the execution. A is discharged.

c) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

Guarantee obtained by misrepresentation invalid. 142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by concealment invalid. 143. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstance is invalid.

Illustrations.

a) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

Guarantee on contract that creditor shall not act on it until co-surety joins.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Implied promise to indemnify surety. 145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

a) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suits, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

b) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

c) A guarantees to C, to the extent of 2000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2000 rupees, but obtains from A payment of the sum of 2000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Co-sureties liable to contribute equally. 146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Illustrations.

a) A, B and C are sureties to D for the sum of 3000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1000 rupees each.

b) A, B and C are sureties to D for the sum of 1000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

Liability of co-sureties bound in different sums. 147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

a) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D. makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

b) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D. makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

c) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D. makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

Chapter IX. Of Bailment.

"Bailment" "bailor", and "bailee" defined. 148. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that

they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee". *Explanation.* If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

Delivery to bailee how made. 149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Bailor's duty to disclose faults in goods bailed. 150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults. If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be taken by bailee. 151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

Bailee when not liable for loss, etc., of thing bailed. 152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Termination of bailment by bailee's act inconsistent with conditions. 153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

Liability of bailee making unauthorized use of goods bailed. 154. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations.

a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

b) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

Effect of mixture, with bailor's consent, of his goods with bailee's. 155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, without bailor's consent, when the goods can be separated. 156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark: A is entitled to have

his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

Effect of mixture, without bailor's consent, when the goods cannot be separated.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Illustration.

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

Repayment by bailor of necessary expenses. 158. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Restoration of goods lent gratuitously. 159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Return of goods bailed on expiration of time or accomplishment of purpose. 160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Bailee's responsibility when goods are not duly returned. 161. If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

Termination of gratuitous bailment by death. 162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Bailor entitled to increase or profit from goods bailed. 163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

Bailor's responsibility to bailee. 164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions respecting them.

Bailment by several joint owners. 165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint-owner without the consent of all, in the absence of any agreement to the contrary.

Bailee not responsible on redelivery to bailor without title. 166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Right of third person claiming goods bailed. 167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of finder of goods; may sue for specific reward offered. 168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

When finder of thing commonly on sale may sell it. 169. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it: 1. When the thing is in danger of perishing or of losing the greater part of its value, or 2. When the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

Bailee's particular lien. 170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

a) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

b) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat until he is paid.

General lien of bankers, factors, wharfingers, attorneys and policy-brokers. 171. Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

Bailments of Pledges.

"Pledge", "pawnor" and "pawnee" defined. 172. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

Pawnee's right of retainer. 173. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances. 174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee's right as to extraordinary expenses incurred. 175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where pawnor makes default. 176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale. If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Defaulting pawnor's right to redeem. 177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Pledge by possessor of goods, or of documentary title to goods. 178. A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents: Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting

improperly: Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.

Pledge where pawnor has only a limited interest. 179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Suits by Bailees or Bailors against Wrong-doers.

Suit by bailor or bailee against wrong-doer. 180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits. 181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

Chapter X. Agency.

Appointment and Authority of Agents.

"Agent" and "principal" defined. 182. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

Who may employ agent. 183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be an agent. 184. As between the principal and third persons any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary. 185. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied. 186. The authority of an agent may be expressed or implied.

Definitions of express and implied authority. 187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purpose of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Extent of agent's authority. 188. An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act. An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

a) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

b) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

Agent's authority in an emergency. 189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Illustrations.

a) An agent for sale may have goods repaired if it be necessary.

b) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttaek. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttaek without spoiling.

Sub-Agents.

When agent cannot delegate. 190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

"Sub-agent" defined. 191. A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Representation of principal by sub-agent properly appointed. Agent's responsibility for sub-agent. Sub-agent's responsibility. 192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal. The agent is responsible to the principal for the acts of the sub-agent: The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

Agent's responsibility for sub-agent appointed without authority. 193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Relation between principal and person duly appointed by agent to act in business of agency. 194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

a) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

b) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

Agent's duty in naming such person. 195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

a) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but surveyor is, responsible to A.

b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

Right of person as to acts done for him without his authority. Effect of ratification. 196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Ratification may be expressed or implied. 197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations.

a) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

b) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite for valid ratification. 198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction. 199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Ratification of unauthorized act cannot injure third person. 200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

a) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

b) A holds a lease from B, terminable on three month's notice. C, an authorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of Authority.

Termination of agency. 201. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination of agency, where agent has an interest in subject-matter. 202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations.

a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

b) A consigns 1000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

When principal may revoke agent's authority. 203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation where authority has been partly exercised. 204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

a) A authorizes B to buy 1000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

b) A authorizes B to buy 1000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1000 bales of cotton in A's name and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

Compensation for revocation by principal or renunciation by agent. 205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Notice of revocation or renunciation. 206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied. 207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect as to agent, and as to third persons. 208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

a) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

b) A, at Madras, by letter directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

c) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

Agent's duty on termination of agency by principal's death or insanity. 209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority. 210. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Agent's Duty to Principal.

Agent's duty in conducting principal's business. 211. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

a) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

b) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

Skill and diligence required from agent. 212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

Illustrations.

a) A, a merchant in Calcutta, has an agent, B, in London to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as e.g., by variation of rate of exchange—but not further.

b) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

c) A, an insurance-broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

d) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton,

omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts. 213. An agent is bound to render proper accounts to his principal on demand.

Agent's duty to communicate with principal. 214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Right of principal when agent deals, on his own account, in business of agency without principal's consent. 215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

b) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Principal's right to benefit gained by agent dealing on his own account in business of agency. 216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Agent's right of retainer out of sums received on principal's account. 217. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's duty to pay sums received for principal. 218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

When agent's remuneration becomes due. 219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

Agent not entitled to remuneration for business misconducted. 220. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Illustrations.

a) A employed B to recover 100,000 rupees from C, and to lay it out on good security. B recovers the 100,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 100,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2000 rupees to B.

b) A employs B to recover 1000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

Agent's lien on principal's property. 221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, when-

ther moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

Principal's duty to Agent.

Agent to be indemnified against consequences of lawful acts. 222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations.

a) B, at Singapur, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

b) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

Agent to be indemnified against consequences of acts done in good faith. 223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Illustrations.

a) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

b) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

Non-liability of employer of agent to do a criminal act. 224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Illustrations.

a) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

b) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Compensation to agent for injury caused by principal's neglect. 225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of agency on contract with third persons.

Enforcement and consequences of agent's contracts. 226. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

a) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B.

b) A, being B's agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

Principal how far bound when agent exceeds authority. 227. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4000 rupees on the ship. B procures a policy for 4000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Principal not bound when excess of agent's authority is not separable. 228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6000 rupees. A may repudiate the whole transaction.

Consequences of notice given to agent. 229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

a) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

b) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal. Presumption of contract to contrary. 230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Such a contract shall be presumed to exist in the following cases: 1. Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad. 2. Where the agent does not disclose the name of his principal. 3. Where the principal, though disclosed, cannot be sued.

Rights of parties to a contract made by agent not disclosed. 231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal. If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of contract with agent supposed to be principal. 232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

Right of person dealing with agent personally liable. 233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable. 234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Liability of pretended agent. 235. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Person falsely contracting as agent not entitled to performance. 236. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

Liability of principal inducing belief that agent's unauthorized acts were authorized. 237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations.

a) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

b) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

Effect, on agreement, of misrepresentation or fraud by agent. 238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Illustrations.

a) A being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

b) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignee.

Chapter XI. Of Partnership.

"Partnership" defined. "Firm" defined. 239. "Partnership" is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the profits thereof between them. Persons who have entered into partnership with one another are called collectively a "firm".

Illustrations.

a) A and B buy 100 bales of cotton, which they agree to sell for their joint account. A and B are partners in respect of such cotton.

b) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

c) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

d) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B. A and B are not partners.

e) A and B are joint owners of a ship. This circumstance does not make them partners.

Lender not a partner by advancing money for share of profits. 240. A loan to a person engaged or about to engage in any trade or undertaking, upon a con-

tract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.

Property left in business by retiring partner, or deceased partner's representative. 241. In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner, to be used in the business is to be considered a loan within the meaning of the last preceding section.

Servant or agent remunerated by share of profits not a partner. 242. No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Widow or child of deceased partner receiving annuity out of profits not a partner. 243. No person, being a widow or child of a deceased partner of a trader and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

Person receiving portion of profits for sale of good-will not a partner. 244. No person receiving, by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

Responsibility of person leading another to believe him a partner. 245. A person who has, by words spoken or written or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as partner in such firm.

Liability of person permitting himself to be represented as a partner. 246. Any one consenting to allow himself to be represented as a partner is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.

Minor partner not personally liable, but his share is. 247. A person who is under the age of majority according to the law to which he is subject may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

Liability of minor partner on attaining majority. 248. A person who has been admitted to the benefits of partnership under the age of majority becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

Partner's liability for debts of partnership. 249. Every partner is liable for all debts and obligations incurred while he is partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

Partner's liability to third person for neglect or fraud of co-partner. 250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

Partner's power to bind co-partners. 251. Each partner who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member binds his co-partners to the same extent as if he were their agent duly appointed for that purpose. *Exception.* If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

a) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

b) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

c) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

d) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

Annulment of contract defining partners' rights and obligations. 252. Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all of them, which consent must either be expressed, or be implied from a uniform course of dealing.

Illustration.

A, B and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the nett profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A receiving one-half of the nett profits and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

Rules determining partners' mutual relations, where no contract to contrary. 253. In the absence of any contract to the contrary the relations of partners to each other are determined by the following rules: 1. All partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss. 2. All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership. 3. Each partner has a right to take part in the management of the partnership business. 4. Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business. 5. When differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners. 6. No person can introduce a new partner into a firm without the consent of all the partners. 7. If from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members. 8. Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time. 9. Where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court. 10. Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve partnership. 254. At the suit of a partner the Court may dissolve the partnership in the following cases: 1. When a partner becomes of unsound mind. 2. When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors. 3. When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person. 4. When any partner becomes incapable of performing his part of the partnership contract. 5. When a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners. 6. When the business of the partnership can only be carried on at a loss.

Dissolution of partnership by prohibition of business. 255. A partnership is in all cases dissolved by its business being prohibited by law.

Rights and obligations of partners in partnership continued after expiry of term for which it was entered into. 256. If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

General duties of partners. 257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Account to firm of benefit derived from transaction affecting partnership. 258. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

a) A, B and C are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

b) A, B and C carry on business together in partnership as merchants trading between Bombay and London. D a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments for him. C is liable to the firm for the money so received by him.

Obligations, to firm, of partner carrying on competing business. 259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

Revocation of continuing guarantee by change in firm. 260. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.

Non-liability of deceased partner's estate for subsequent obligations. 261. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

Payment of partnership debts, and of separate debts. 262. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner must be applied in payment of his separate debts or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Continuance of partners' rights and obligations after dissolution. 263. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.

Notice of dissolution. 264. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

Winding-up by Court on dissolution or after termination. 265. Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of any contract to the contrary, wind up the business of the partnership, provide for the payment of its debts and distribute the surplus according to the shares of the partners respectively.

Limited liability partnerships, incorporated partnerships and joint-stock companies. 266. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.

Schedule.

Enactments repealed.

Statutes.

| No. and year of Statute. | Title. | Extent of repeal. |
|-------------------------------|--|-----------------------------|
| Stat. 29 Car. II, cap. 3. | An Act for prevention of Frauds and Perjuries. | Sections 1, 2, 3, 4 and 17. |
| Stat. 11 & 12 Vict., cap. 21. | To consolidate and amend the law relating to insolvent debtors in India. | Section 42. |

Acts.

| No. and year of Act. | Title. | Extent of repeal. |
|----------------------|--|--------------------|
| Act XIII of 1840. | An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 4 Geo. IV, chap. 83, as altered and amended by the Statute 6 Geo. IV, chap. 94. | The whole. |
| Act XIV of 1840. | An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 9 Geo. IV, chap. 14. | The whole. |
| Act XX of 1844. | An Act to amend the law relating to Advances <i>bonâ fide</i> made to Agents intrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 5 & 6 Victoria, c. 39, as altered by this Act. | The whole. |
| Act XXI of 1848. | An Act for avoiding Wagers. | The whole. |
| Act V of 1866. | An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India. | Sections 9 and 10. |
| Act XV of 1866. | An Act to amend the law of Partnership in India. | The whole. |
| Act VIII of 1867. | An Act to amend the law relating to Horse-racing in India. | The whole. |

The Specific Relief Act 1877.

(7th February, 1877.)

No. I of 1877.

An Act to define and amend the law relating to certain kinds of Specific Relief.

(As modified up to the 1st February, 1904.)

Part I. Preliminary.

Short title. Local extent. Commencement. 1. This Act may be called the Specific Relief Act, 1877. It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XIV of 1874. And it shall come into force on the first day of May, 1877.

2. [Repeal of enactments.]

Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context: "obligation" includes every duty enforceable by law; "Trust" includes every species of express, implied or constructive fiduciary ownership; "Trustee" includes every person holding, expressly, by implication or constructively, a fiduciary character.

Illustrations.

a) Z bequeaths land to A, "not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life." A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

b) A is the legal, medical or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

c) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

d) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

e) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself

when the price was lower, and thus makes a considerable profit. A is a trustee, for his co-partners, within the meaning of this Act, of the profit so made.

f) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

g) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

h) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

"Settlement" means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of; and all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

4. Savings.

Specific relief how given. 5. Specific relief is given: a) By taking possession of certain property and delivering it to a claimant; b) By ordering a party to do the very act which he is under an obligation to do; c) By preventing a party from doing that which he is under an obligation not to do; d) By determining and declaring the rights of parties otherwise than by an award of compensation; or e) By appointing a receiver.

6. Preventive relief.

7. Relief not granted to enforce penal law.

Part II. Of Specific Relief.

Chapter I. Of recovering Possession of Property.

Possession of Immoveable Property.

8. Recovery of specific immoveable property.

9. Suit by person dispossessed of immoveable property.

Possession of Moveable Property.

10. Recovery of specific moveable property.

11. Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

Chapter II. Of the Specific Performance of Contracts.

Contracts which may be specifically enforced.

Cases in which specific performance enforceable. 12. Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced: a) When the act agreed to be done is in the performance, wholly or partly, of a trust; b) When there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; c) When the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or d) When it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done. *Explanation.* Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations.

Of clause a): A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

Of clause b): A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

Of clause c): A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway company contract with Z to make an archway through their railway

to connect lands of Z served by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

A contracts to sell, and B contracts to buy, a certain, number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

Of clause d): A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contracts of which the subject has partially ceased to exist. 13. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations.

a) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made, the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

b) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

Specific performance of part of contract where part unperformed is small. 14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Specific performance of part of contract where part unperformed is large. 15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Specific performance of independent part of contract. 16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract. 17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Purchaser's rights against vendor with imperfect title. 18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights: a) If the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest; b) Where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence; c) Where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee; d) Where the vendor or lessor sues for specific performance of the contract, and the suit is

dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

Power to award compensation in certain cases. 19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance. If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly. If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly. Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation. The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations.

Of the second paragraph: A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

Of the third paragraph: A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January, 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January, 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

Of the *Explanation*: A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the Directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

Liquidation of damages not a bar to specific performance. 20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A contracts to grant B an under-lease of property held by A under C, and that he will apply to C for a license necessary to the validity of the under-lease, and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

Contracts which cannot be specifically enforced.

Contracts not specifically enforceable. 21. The following contracts cannot be specifically enforced: a) A contract for the non-performance of which compensation in money is an adequate relief; b) A contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms; c) A contract the terms of which the Court cannot find with reasonable certainty; d) A contract which is in its nature revocable; e) A contract made by trustees either in excess of their powers or in breach of their trust; f) A contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers; g) A contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date; h) A contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist. And, save as provided by the Code of Civil Procedure [and the Indian Arbitration Act,

1899.] no contract to refer [present or future differences] to arbitration shall be specifically enforced; but if any person who has made such a contract and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Of the Discretion of the Court.

Discretion as to decreeing specific performance. 22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of Appeal. The following are cases in which the Court may properly exercise a discretion not to decree specific performance: I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part. II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff. The following is a case in which the Court may properly exercise a discretion to decree specific performance: III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

For whom Contracts may be specifically enforced.

Who may obtain specific performance. 23. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by: a) Any party thereto; b) The representative in interest, or the principal, of any party thereto: provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed; c)—f) Contain civil law provisions of no interest for this Work; g) When a public company has entered into a contract and subsequently becomes amalgamated with another public company which arises out of the amalgamation; h) When the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of incorporation, the company.

For whom Contracts cannot be specifically enforced.

Personal bars to the relief. 24. Specific performance of a contract cannot be enforced in favour of a person: a) Who could not recover compensation for its breach; b) Who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed; c) Who has already chosen his remedy and obtained satisfaction for the alleged breach of contract; or d) Who previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Contracts to sell property by one who has no title, or who is a voluntary settler. 25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor: a) Who, knowing himself not to have any title to the property, has contracted to sell or let the same; b) Who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt; c) Who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

For whom Contracts cannot be specifically enforced, except with a Variation.

Non-enforcement except with variation. 26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely): a) Where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it; b) Where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable

misapprehension as to its effect as between himself and the plaintiff; c) Where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil; d) Where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce; e) Where the parties have, subsequently to the execution of the contract, contracted to vary it.

Against whom Contracts may be specifically enforced.

Relief against parties and persons claiming under them by subsequent title. 27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against: a) Either party thereto; b) Any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract; c) Any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant; d) When a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation; e) When the promoters of a public company have, before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Against whom Contracts cannot be specifically enforced.

What parties cannot be compelled to perform. 28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases: a) If the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff; b) If his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; c) If his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

The effect of dismissing a Suit for Specific Performance.

Bar of suit for breach after dismissal. 29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

Chapter III. Of the Rectification of Instruments (Sections 30—34). Chapter IV. Of the Rescission of Contracts (Sections 35—38). Chapter V. Of the Cancellation of Instruments (Sections 39—41). Chapter VI. Of Declaratory Decrees (Sections 42—43). Chapter VII. Of the Appointment of Receivers (Section 44). Chapter VIII. Of the Enforcement of Public Duties (Sections 45—51).

Part III. Of Preventive Relief. Chapter IX. Of Injunctions generally (Sections 52—53). Chapter X. Of Perpetual Injunctions (Sections 54—57).

Act No. VI of 1882.¹⁾

(24th February, 1882.)

An Act for the incorporation, regulation and winding-up of Trading Companies and other Associations.

(As modified up to the 1st August, 1906.)

Preamble. Whereas it is expedient to amend the law relating to the incorporation, regulation and winding-up of Trading Companies and other Associations: It is hereby enacted as follows:

¹⁾ Act VI of 1882 has been declared in force in Upper Burma generally (except the Shan States), by the Upper Burma Laws Act, 1886 (20 of 1886), s. 6, see now s. 4 (1) of the Burma

Preliminary.

Short title. Local extent. Commencement. 1. This Act may be cited as the Indian Companies Act, 1882. It extends to the whole of British India. It shall come into force on the first day of May, 1882; and the time at which it comes into force is hereinafter referred to as the commencement of this Act.

Repeal of Act 10 of 1866. 2. On and from the commencement of this Act, the Indian Companies Act, 1866, shall be repealed. But such repeal shall not affect: a) The incorporation of any Company registered under the said Act or any Act thereby repealed; b) Any right or privilege acquired, or liability incurred, under the said Act or any Act thereby repealed; c) Table B¹⁾ in the schedule annexed to Act No. XIX of 1857²⁾ or any part thereof, so far as the same applies to any Company existing at the time of the commencement of this Act. And all references to the said Indian Companies Act, 1866³⁾, in Acts or Regulations passed before the commencement of this Act shall be read as if made to this Act; and all rules made, fees directed, resolutions passed and other things duly done under the same Act shall be deemed to be respectively made, directed, passed and done under this Act; and all Companies under the same Act shall be deemed to be Companies under this Act.

Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context: "Insurance Company" means a Company that carries on the business of insurance either solely or in common with any other business or businesses; "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction; "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include the High Court in the exercise of its ordinary original civil jurisdiction.

Prohibition of partnerships exceeding certain number. 4. No Company, Association or Partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a Company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor General in Council, or by Royal Charter or Letters Patent; and no Company, Association or Partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the Company, Association or Partnership, or by the individual members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act or of Letters Patent.

Division of Act. 5. This Act is divided into nine Parts, relating to the following subject-matters: The first Part: To the constitution and incorporation of Companies and Associations under this Act; The second Part: To the distribution of the capital and liability of members of Companies and Associations under this Act; The third Part: To the management and administration of Companies and Associations under this Act; The fourth Part: To the winding-up of Companies and Associations under this Act; The fifth Part: To the registration-office; The sixth Part: To the application of this Act to Companies registered under Act No. XIX of 1857 (*for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof*), and Act No. VII of 1860 (*to enable Joint-Stock Banking Companies to be formed on the principle of limited liability*), or either of them; The seventh Part: To Companies authorised to register under this Act; The eighth Part: To the application of this Act to unregistered Companies; The ninth Part: To miscellaneous provisions.

Part I. Constitution and Incorporation of Companies and Associations under this Act.

Memorandum of Association.

Mode of forming Company. 6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association

Laws Act, 1898 (XII of 1898), by which Act 20 of 1886 has been repealed. It has been extended, under s. 5 of the Scheduled Districts Act, 1874 (14 of 1874), to British Baluchistan, *see Gazette of India*, 1895, Pt. II, p. 9. Ss. 3 to 10 of the Indian Companies (Memorandum of Association) Act, 1895, are to be read with, and taken as part of, this Act, *see Appendix II, infra*. The Indian Companies (Branch Registers) Act, 1900 (4 of 1900), is to be construed as one with this Act, *see Appendix III, infra*. — ¹⁾ Printed *infra*, Appendix I. — ²⁾ Act 19 of 1857 was repealed by Act 10 of 1866, s. 219. — ³⁾ Act 10 of 1866 was repealed by s. 2 of this Act.

and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated Company, with or without limited liability. *Explanation.* Foreigners are persons within the meaning of this section, although the whole or any part of the business of the proposed Company is intended to be transacted out of British India.

Mode of limiting liability of members. Directors with unlimited liability. 7. The liability of the members of a Company formed under this Act, may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the Company in the event of its being wound up. Where a Company is formed as a Limited Company, the liability of the directors or managers of such Company, or of the managing director, may, if so provided by the memorandum of association, be unlimited.

Memorandum of association of a Company limited by shares. 8. Where a Company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a Company limited by shares, the memorandum of association shall contain the following things (that is to say: a) The name of the proposed Company with the addition of the word "limited" as the last word in such name; b) The part of British India in which the registered office of the Company is proposed to be situate; c) The objects for which the proposed Company is to be established; d) A declaration that the liability of the members is limited; e) The amount of capital with which the Company proposes to be registered divided into shares of a certain fixed amount; Subject to the following regulations; f) That no subscriber shall take less than one share; g) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Memorandum of association of a Company limited by guarantee. 9. Where a Company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the Company in the event of the same being wound up (hereinafter referred to as a Company limited by guarantee), the memorandum of association shall contain the following things (that is to say): a) The name of the proposed Company, with the addition of the word "limited" as the last word in such name; b) The part of British India in which the registered office of the Company is proposed to be situate; c) The objects for which the proposed Company is to be established; d) A declaration that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding-up the Company and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Memorandum of association of an unlimited Company. 10. Where a company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as an unlimited Company), the memorandum of association shall contain the following things (that is to say): a) The name of the proposed Company; b) The part of British India in which the registered office of the Company is proposed to be situate; c) The objects for which the proposed Company is to be established.

Signature and effect of memorandum of association. 11. The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. It shall, when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a contract to observe all the conditions of such memorandum subject to the provisions of this Act.

Power of certain Companies to alter memorandum of association. 12. Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or

to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock; but, save as aforesaid, and save as hereinafter provided, no alteration shall be made by any Company in the conditions contained in its memorandum of association.

Reduction of Capital and Shares.

Power to Company to reduce capital. 13. Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any Company shall come into operation until an order of the Court is registered by the Registrar of Joint-Stock Companies, as is hereinafter mentioned. *Explanation I.* The word "capital" includes paid-up capital. *Explanation II.* The power to reduce capital conferred by this section includes a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the Company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the Company; and, to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved, notwithstanding anything hereinafter contained.

Company to add "and reduced" to its name for a limited period. 14. The Company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the Company.

Company to apply to the Court for an order confirming reduction. 15. A Company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and, on the hearing of the petition, the Court, if satisfied that, with respect to every creditor of the Company who, under the provisions of this Act, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has been determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit. When the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction; and it shall not be necessary, before the presentation of any petition under this section, to add, and the Court may, if it thinks fit so to do, dispense with the addition of the words "and reduced," as mentioned in section 14. In any case that the Court thinks fit so to, it may require the Company to publish, in such manner as the Court thinks fit, the reasons for the reduction or such other information regarding the same as the Court may think expedient with a view to give proper information to the public in relation to such reduction, and, if the Court thinks fit, the cause which led thereto.

Creditors may object to reduction and list of objecting creditors to be settled by Court. 16. Where a Company proposes to reduce its capital, every creditor of the Company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the Company, would be admissible in proof against the Company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object. The Court shall settle a list of such creditors, and for that purpose shall ascertain, as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the Company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction: Provided that, when the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction.

Court may dispense with consent of creditor on security being given for his debt. 17. When a creditor whose name is entered on the list of creditors, and whose debt

or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it thinks fit) dispense with such consent on the Company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned (that is to say): a) If the full amount of the debt or claim of the creditor is admitted by the Company, or, though not admitted, is such as the Company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated; b) If the full amount of the debt or claim of the creditors is not admitted by the Company, and is not such as the Company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the Company may be liable in respect thereof, in the same manner as if the Company were being wound up by the Court; and the amount fixed by the Court on such enquiry and adjudication shall be set apart and appropriated.

Order and minute to be registered. 18. The Registrar of Joint-Stock Companies, upon the production to him of an order of the Court confirming the reduction of the capital of a Company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing, with respect to the capital of the Company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share, shall register the order and minute; and, on the registration, the special resolution confirmed by the order so registered shall take effect. Notice of such registration shall be published in such manner as the Court may direct. The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act, with respect to the reduction of capital, have been complied with, and that the capital of the Company is such as is stated in the minute.

Minute to form part of memorandum of association. 19. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the Company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association; and subject as in this Act mentioned, no member of the Company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings. 20. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a Company under this Act, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the Company is unable, within the meaning of this Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the Company at the date of the registration of the order and minute relating to the reduction of its capital shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the Company had commenced to be wound up on the day prior to such registration, and, on the Company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up. Nothing in this section shall affect the rights of the contributories of the Company among themselves.

Registered minute to be embodied in memorandum of association. 21. A minute when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and if any Company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding ten rupees for each copy in respect of which such default is made; and every director

and manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Penalty on concealment of name of creditor. 22. If any director, manager or officer of the Company wilfully conceals the name of any creditor of the Company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the Company, or if any director or manager of the Company abets, within the meaning of the Indian Penal Code, any such concealment or misrepresentation as aforesaid, every such director, manager or officer shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Power to reduce capital by cancellation of unissued shares. 23. Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations, as originally framed or as altered by special resolution as to reduce its capital by cancelling any shares which, at the date of passing such resolution, have not been taken or agreed to be taken by any persons; and the provisions as to reduction of capital contained in the other sections of this Act shall not apply to any reduction made in pursuance of this section.

Sub-division of Shares.

Shares may be divided into shares of smaller amount. 24. Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as, by sub-division of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association: Provided that, in the sub-division of the existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Special resolution to be embodied in memorandum of association. 25. The statement of the number and amount of the shares into which the capital of the Company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any Company which makes default in complying with the provisions of this section shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly or wilfully authorises or permits such default shall incur the like penalty.

Associations not for Profit.

Special provisions as to associations formed for purposes not of gain. 26. Where any association which might be formed under this Act as a limited Company proves to the Local Government that it is formed for the purpose of promoting commerce, art, science, charity or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to its members, the Local Government may, by license under the hand of one of its Secretaries, direct such association to be registered with limited liability, without the addition of the word "limited" to its name; and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited Companies; with the exceptions that none of the provisions of this Act that require a limited Company to use the word "limited" as any part of its name, or to publish its name, or to send a list of its members, directors or managers to the Registrar, shall apply to an association so registered. The license by the Local Government may be granted upon such conditions and subject to such regulations as the Local Government thinks fit to impose; and such conditions and regulations shall be binding on the association, and may at the option of the Local Government be inserted in the memorandum and articles of association, or in both or one of such documents.

Calls upon Shares.

Company may have some shares fully paid, and others not. 27. Nothing herein contained shall be deemed to prevent any Company under this Act, if authorised

by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things, namely: a) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls; b) Accepting from any member of the Company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made; c) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Manner in which shares are to be issued and held. 28. Every share in any Company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint-Stock Companies at or before the issue of such shares.

Transfer of Shares.

Transfer may be registered at request of transferor. 29. A Company shall, on the application of the transferor of any share or interest in the Company, enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Share-Warrants to Bearer.

Warrant of limited shares fully paid up may be issued in name of bearer. 30. In the case of a Company limited by shares, the Company, if authorised so to do by its regulations, as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up or with respect to stock, issue under their common seal a warrant (hereinafter referred to as a share-warrant) stating that the bearer thereof is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on such shares or stock.

Effect of share-warrant. 31. A share-warrant shall entitle the bearer thereof to the shares or stock specified therein; and such shares or stock may be transferred by the delivery of the share-warrant.

Re-registration of bearer of a share-warrant in the register. 32. The bearer of a share-warrant shall, subject to the regulations of the Company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members; and the Company shall be responsible for any loss incurred by any person by reason of the Company entering in its register of members the name of any bearer of a share-warrant in respect of the shares or stock specified therein without the share-warrant being surrendered and cancelled.

Regulations of the Company may make the bearer of a share-warrant a member. 33. The bearer of a share-warrant may, if the regulations of the Company so provide, be deemed to be a member of the Company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations: Provided that the bearer of a share-warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the Company in cases where such a qualification is prescribed by the regulations of the Company.

Entries in register where share-warrant issued. 34. On the issue of a share-warrant in respect of any share or stock, the Company shall strike out of its register of members the name of the member then entered therein as holding such share or stock, as if he had ceased to be member, and shall enter in the register the following particulars: a) The fact of the issue of the warrant; b) A statement of the shares or stock included in the warrant, distinguishing each share by its number; c) The date of the issue of the warrant.

35. [*Stamps on share-warrants. Penalty for issuing share-warrant not duly stamped.*] *Rep. Indian Stamp Act, 1899 (II of 1899).*

Change of Name.

Power of Companies to change name. 36. Any Company under this Act, with the sanction of a special resolution of the Company passed in manner hereinafter

mentioned, and with the approval of the Local Government testified in writing under the hand of one of the Secretaries to such Government, may change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company; and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name. *Explanation.* The issue of the certificate of incorporation is necessary to complete the change of name.

Articles of Association.

Regulations to be prescribed by articles of association. 37. The memorandum of association may, in the case of a Company limited by shares, and shall, in the case of a Company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the Company as the subscribers to the memorandum of association deem expedient. The articles shall be expressed in separate paragraphs, numbered consecutively. They may adopt all or any of the provisions contained in the table marked A in the first schedule hereto. They shall, in the case of a Company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the Company proposes to be registered, and in the case of a Company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the Company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration. In a Company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Application of table A. 38. In the case of a Company limited by shares, if the memorandum of association is not accompanied by articles of association or, in so far as the articles do not exclude or modify the regulations contained in the table marked A in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the Company, in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered.

Signature and effect of articles of association. 39. The articles of association shall be printed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. When registered, they shall bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto and as if such articles contained a contract on the part of himself, his heirs, executors and administrators to conform to all the regulations contained in such articles subject to the provisions of this Act. All moneys payable by any member to the Company in pursuance of the conditions and regulations of the Company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the Company.

General Provisions.

Registration of memorandum of association and articles of association with fees as in tables B and C. 40. The memorandum of association, and the articles of association, if any, shall be delivered to the Registrar of Joint-Stock Companies hereinafter mentioned, who shall retain and register the same. It is not his duty to require evidence as to whether the several subscribers to a memorandum of association so delivered are competent to contract. There shall be paid to the Registrar by a Company having a capital divided into shares, in respect of the several matters mentioned in the table marked B in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor General in Council may from time to time direct, and by a Company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor General in Council may from time to time direct. All fees paid to the said Registrar in pursuance of this Act shall be accounted for to Government.

Effect of registration. 41. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the Registrar shall certify under his hand that the Company is incorporated, and in the case of a limited Company that the Company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the Company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated Company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the Company, in the event of the same being wound up, as is hereinafter mentioned. A certificate of the incorporation of any Company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

Copies of memorandum and articles to be given to members. 42. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of such sum, not exceeding one rupee, as may be prescribed by the Company for each copy; and if any Company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the Company so making default shall for each such offence incur a penalty not exceeding twenty rupees.

Prohibition against identity of names in Companies. 43. No Company shall be registered under a name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires. If any Company, through inadvertence or otherwise, is without such consent as aforesaid, registered by a name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the sanction of the Registrar, change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company, and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

Part II. Distribution of Capital and Liability of Members of Companies and Associations under this Act.

Distribution of Capital.

Nature of interest in Company. 44. The shares or other interest of any member in a Company under this Act shall be moveable property, capable of being transferred in manner provided by the regulations of the Company, and shall not be of the nature of real estate or immoveable property; and each share shall, in the case of a Company having a capital divided into shares, be distinguished by its appropriate number.

Definition of "member." 45. The subscribers of the memorandum of association of any Company under this Act shall be deemed to have agreed to become members of the Company whose memorandum they have subscribed, and upon the registration of the Company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed with a Company under this Act to become a member of such Company, and whose name is entered on the register of members, shall be deemed to be a member of the Company.

Transfer by personal representative. 46. Any transfer of the share or other interest of a deceased member of the Company under this Act made by his personal representative shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Register of members. 47. Every Company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars: a) The names and addresses, and the occupations, if any, of the members of the Company, with the addition, in the case of a Company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member; b) The date at which the name of any person was entered in the register as a member; c) The date at which any person ceased to be a member. Where a share-warrant has been issued under section 30, until the warrant is surrendered, the particulars mentioned in section 34 shall be deemed to be the particulars which are required by this section to be entered in the register of members of a Company; and, on the surrender of a warrant, the date of such surrender shall be entered as if it were the date at which a person ceased to be a member. Any Company acting in contravention of this section shall incur a penalty not exceeding fifty rupees for every day during which its default in complying with the provisions of this section continues, and every director or manager of the Company who knowingly and wilfully authorises or permits such contravention shall incur the like penalty.

Annual list of members. 48. Every Company under this Act and having a capital divided into shares shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the Company. Such list shall state the names, addresses and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars: a) The amount of the capital of the Company and the number of shares into which it is divided; b) The number of shares taken from the commencement of the Company up to the date of the summary; c) The amount of calls made on each share; d) The total amount of calls received; e) The total amount of calls unpaid; f) The total amount of shares forfeited; g) The names, addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them. The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section; and a copy shall forthwith be forwarded to the Registrar of Joint-Stock Companies.

Particulars to be contained in annual summary. 49. After the issue by the Company of a share-warrant, the annual summary required by section 48 shall contain the following particulars (namely): The total amount of shares or stock for which share-warrants are outstanding at the date of the summary, and the total amount of share-warrants which have been issued and surrendered respectively since the last summary was made and the number of shares or amount of stock comprised in each warrant.

Penalty on Company, etc., not keeping a proper register. 50. If any Company under this Act and having a capital divided into shares makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such Company shall incur a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Company to give notice of consolidation or of conversion of capital into stock. 51. Every Company under this Act having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall, within fifteen days of such consolidation, division or conversion, give notice to the Registrar of Joint-Stock Companies of the same, specifying the shares so consolidated, divided or converted.

Effect of conversion of shares into stock. 52. Where any Company under this Act and having a capital divided into shares has converted any portion of its capital into stock and given notice of such conversion to the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept

by the Company and the list of members to be forwarded to the Registrar shall show the amount of stock held by each member in the list, instead of the amount of shares and the particulars relating to shares hereinbefore required.

Entry of trusts on register. 53. No notice of any trust, express, implied or constructive, shall be entered on the register or be receivable by the Registrar in the case of Companies under this Act and registered in British India.

Certificate of shares or stock. 54. A certificate under the common seal of the Company, specifying any shares or stock held by any member of a Company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

Inspection of register. 55. The register of members, commencing from the date of the registration of the Company, shall be kept at the registered office of the Company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall, during business hours, but subject to such reasonable restrictions as the Company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one rupee, or such less sum as the Company may prescribe, for each inspection. Every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of two annas for every hundred words required to be copied. If such inspection or copy is refused, the Company shall incur for each refusal a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues. Every director and manager of the Company who knowingly authorises or permits such refusal shall incur the like penalty. In addition to the above penalty any Judge of a High Court may, by order, compel an immediate inspection of the register.

Power to close register. 56. Any Company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the Company is situate and in the local official Gazette, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Notice of increase of capital and of members to be given to Registrar. 57. Where a Company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and, where a Company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorised, and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members. If such notice is not given within the period aforesaid, the Company in default shall incur a penalty not exceeding one hundred rupees for every day during which such neglect to give notice continues; and every director and manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Remedy for improper entry or omission of entry in register. 58. If the name of any person is fraudulently or without sufficient cause entered in, or omitted from, the register of members kept by any Company under this Act, or if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of the Company, or the Company itself, may, by application to the principal Court of original civil jurisdiction in the district or place in which the registered office of the Company is situate, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the Company to pay all the costs of such application, and any damages the party aggrieved may have sustained. The Court may in any proceeding under this section decide any question relating to the title of any person who is a party to such proceeding to have his name entered in, or omitted from, the register, whether such

question arises between two or more members or alleged members, or between any members or alleged members and the Company, and whether there has or has not been default on the part of the Company; and generally the Court may, in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register: Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal in the manner directed by the Code of Civil Procedure shall lie.

Notice to Registrar of rectification of register. 59. Whenever any order has been made for rectifying the register in the case of a Company hereby required to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Register to be evidence. 60. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Liability of Members.

Liability of present and past members of Company. 61. In the event of a Company formed under this Act being wound up, every present and past member of such Company shall be liable to contribute to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company and the costs, charges and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say): a) No past member shall be liable to contribute to the assets of the Company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up; b) No past member shall be liable to contribute in respect of any debt or liability of the Company contracted after the time at which he ceased to be a member; c) No past member shall be liable to contribute to the assets of the Company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act; d) In the case of a Company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member; e) In the case of a Company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association; f) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the Company are alone made liable in respect of such policy or contract; g) No sum due to any member of a Company in his character of a member, by way of dividends, profits or otherwise, shall be deemed to be a debt of the Company payable to such member in a case of competition between himself and any other creditor not being member of the Company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves. *Explanation I.* The liability of past members is a liability to contribute to the general assets of the Company, against which assets creditors (at whatever time their debts may have been contracted) have equal rights. *Explanation II.* In estimating the debts to which a past member is liable, all dividends paid on these debts under the winding-up must be deducted.

Liability of director whose liability is unlimited. 62. With respect to the contributions to be required in the event of the winding-up of a limited Company from any director or manager whose liability is unlimited, the following modifications shall be made in the last preceding section: a) Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited Company; b) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company; c) No contribution required from any past director or manager in respect of any debt or liability of the Company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company;

d) Subject to the provisions contained in the regulations of the Company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the Company, or the costs, charges and expenses of the winding-up.

Part III. Management and Administration of Companies and Associations under this Act.

Provisions for Protection of Creditors.

Registered office of Company. 63. Every Company under this Act shall have a registered office to which all communications and notices may be addressed. If any Company under this Act carries on business without having such an office, it shall incur a penalty not exceeding fifty rupees for every day during which business is so carried on.

Notice of situation of registered office. 64. Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him. Until such notice is given, the Company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Publication of name by a limited Company. 65. Every limited Company under this Act whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position, in letters easily legible, in the English language, and also, if the registered office be situate in a district beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in such district, and shall have its name engraven in legible characters in such language or languages on its seal, and shall have its name mentioned in legible characters [in the English language] in all notices, advertisements and other official publications of such Company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts and letters of credit of the Company.

Penalties on non-publication of name. 66. If any limited Company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding fifty rupees for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed. Every director and manager of the Company who knowingly and wilfully authorises or permits such default shall be liable to the like penalty. If any director, or manager, or officer of such Company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the Company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement or other official publication of such Company or signs or authorises to be signed on behalf of such Company any bill of exchange, hundi, promissory note, endorsement, cheque [or] order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the Company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of one thousand rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the Company.

Contracts.

Contracts how made. 67. Contracts on behalf of any Company under this Act may be made as follows (that is to say): a) Any contract, which if made between private persons would be by law required to be in writing, and if made according to English law, to be under seal, may be made on behalf of the Company in writing under the common seal of the Company; and such contract may be in the same manner varied or discharged; b) Any contract, which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Company in writing signed by any person acting under the express or implied authority of the Company; and such contract may in the same manner be varied or discharged; c) Any contract, which if made

between private persons would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the Company by any person acting under the express or implied authority of the Company; and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the Company and their successors, and all other parties thereto, their heirs, executors or administrators, as the case may be.

Register of mortgages. 68. Every limited Company under this Act shall keep a register of all mortgages and charges specifically affecting property of the Company, and shall enter in such register, in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. If any property of the Company is mortgaged or charged without such entry as aforesaid being made, every director, manager or other officer of the Company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding five hundred rupees. The register of mortgages required by this section shall be open to inspection by any creditor or member of the Company at all reasonable times. If such inspection is refused, any officer of the Company refusing the same, and every director and manager of the Company authorising or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues. The High Court or any Judge thereof may by order compel the performance of the duty imposed by this section on a limited Company, and in addition to the above penalty may, by order, compel an immediate inspection of the register. *Explanation.* Omission to register under this section a mortgage or charge does not render the same invalid. But the officers of the Company cannot avail themselves as such of a mortgage or charge specifically affecting property of the Company and not so registered.

Certain Companies to publish statement entered in schedule. 69. Every banking Company, and every insurance Company, and deposit, provident or benefit Society under this Act, shall before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D in the first schedule hereto, or as near thereto as circumstances will admit; and a copy of such statement shall be put up in a conspicuous place in the registered office of the Company and in every branch office or place where the business of the Company is carried on. If default is made in compliance with the provisions of this section, the Company shall be liable to a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty. Every member and every creditor of any Company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding eight annas.

List of directors to be sent to Registrar. 70. Every Company under this Act and not having a capital divided into shares shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Joint-Stock Companies a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

Penalty on Company not keeping register of directors. 71. If any Company under this Act and not having a capital divided into shares makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent Company shall incur a penalty not exceeding one hundred rupees for every day during which such default continues; and every director or manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Promissory notes, bills of exchange and hundis. 72. A promissory note, bill of exchange, or hundi shall be deemed to have been made, drawn, accepted or endorsed on behalf of any Company under this Act, if made, drawn, accepted or endorsed in the name of the Company by any person acting under the authority of the Company, or if made, drawn, accepted or endorsed by or on behalf of

on account of the Company by any person acting under the authority of the Company.

Prohibition against carrying on business with less than seven members. 73. If any Company under this Act carries on business when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person who is a member of such Company during the time that it so carries, on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debt of the Company contracted during such time, and may be sued for the same without the joinder in the suit of any other member.

Provisions for Protection of Members.

General meeting of Company. Balance-sheet. Audit. 74. A general meeting of every Company under this Act shall be held once at the least in every year. A balance-sheet shall be made out and filed with the Registrar of Joint-Stock Companies within twelve months after the Company has been registered, and once at least in every year afterwards within twelve months from the filing of the balance-sheet immediately preceding; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to table A in the first schedule hereto, or as near thereto as circumstances admit. And once at the least in every year the accounts of the Company shall be examined and the correctness of the last balance-sheet and its conformity with the law ascertained and verified by one or more auditor or auditors. No balance-sheet shall be filed with the Registrar unless and until its correctness and conformity with the law have been so ascertained and certified, and it has been laid before and adopted by the Company in general meeting. If default is made in compliance with any of the provisions of this section, every director and manager of the Company who knowingly and wilfully authorises or permits such default shall be liable to a penalty of one thousand rupees.

Meetings.

Company to hold meeting within six months after registration. 75. Every Company formed under this Act, after the commencement of this Act, shall hold a general meeting, within six months after its memorandum of association is registered; and, if such meeting is not held the Company shall be liable to a penalty not exceeding fifty rupees a day for every day after the expiration of such six months, until the meeting is held; and every director or manager of the Company and every subscriber of the memorandum of association who knowingly authorises or permits such default shall be liable to the same penalty.

Power to alter regulations by special resolution. Power to make liability of directors unlimited. 76. Subject to the provisions of this Act and to the conditions contained in the memorandum of association, any Company formed under this Act or the Indian Companies Act, 1866, may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the Company contained in the articles of association, or in the table marked A in the first schedule, where such table is applicable to the Company, or make new regulations to the exclusion of, or in addition to, all or any of the regulations of the Company. Any regulations so made by special resolution shall be deemed to be regulations of the Company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution. Any limited Company formed under this Act or the Indian Companies Act, 1866, may by a special resolution, if authorised to do so by its regulations as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited, from and after the date of such resolution, the liability of its directors or managers, or of the managing director. Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in, or annexed to, every copy of the memorandum of association which is issued after the passing of the resolution.

Definition of "special resolution." 77. A resolution passed by a Company under this Act shall be deemed to be special whenever a resolution has been passed by

a majority of not less than three-fourths of such members of the Company for the time being entitled, according to the regulations of the Company, to vote, as may be present in person or by proxy (in cases where by the regulations of the Company proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote, as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed. At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the Company. In computing the majority under this section when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

Provision where no regulations as to meetings. 78. In default of any regulations as to voting, every member shall have one vote, and, in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first schedule hereto. In default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same, and, in default of any regulation as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Registration of special resolutions. 79. A copy of every special resolution that is passed by any Company under this Act shall be printed and forwarded to the Registrar of Joint-Stock Companies and be recorded by him. If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the Company shall incur a penalty not exceeding twenty rupees for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director and manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Copies of special resolutions to be embodied in articles of association. 80. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to, or embodied in, every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of every special resolution shall be forwarded in print to any member requesting the same on payment of one rupee or such less sum as the Company may direct. If any Company makes default in complying with the provisions of this section or section 76, it shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Execution of deeds abroad. 81. Any Company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India; and every deed signed by such attorney on behalf of the Company and under his seal shall be binding on the Company and have the same effect as if it were under the common seal of the Company.

Examination of affairs of Company by inspectors. 82. The Local Government may appoint one or more competent inspectors to examine into the affairs of any Company under this Act, and to report thereon in such manner as the Local Government may direct upon the applications following (that is to say): a) In the case of a banking or any other Company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the Company for the time being issued; b) In the case of any Company not having a capital divided into shares, upon the application of members being in number

not less than one-fifth of the whole number of persons for the time being entered on the register of the Company as members.

Application for inspection to be supported by evidence. 83. The application shall be supported by such evidence as the Local Government may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same. The Local Government may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Inspection of books. 84. It shall be the duty of all officers and agents of the Company to produce for the examination of the inspectors all books and documents in their custody or power. Any inspector may examine upon oath the officers and agents of the Company in relation to its business. If any such officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the Company, he shall incur a penalty not exceeding one hundred rupees in respect of each such offence.

Result of examination how dealt with. 85. Upon the conclusion of the examination, the inspectors shall report their opinions to the Local Government. Such report shall be written or printed as the Local Government directs. A copy shall be forwarded by the Local Government to the registered office of the Company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Local Government shall direct the same to be paid out of the assets of the Company, which the Local Government is hereby authorised to do.

Power of Company to appoint inspectors. 86. Any Company under this Act may, by a special resolution, appoint inspectors for the purpose of examining into the affairs of the Company. The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Local Government, with this exception, that, instead of making their report to the Local Government, they shall make the same in such manner and to such persons as the Company in general meeting directs. The officers and agents of the Company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Local Government.

Report of inspectors to be evidence. 87. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the Company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Prospectus, etc., to specify dates and names of parties to certain prior contracts. 88. Every prospectus of a Company, and every notice inviting persons to subscribe for shares in any Joint-Stock Company, shall specify the dates [of] and the names of the parties to any agreement enforceable by law which has been entered into by the Company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice (whether subject to adoption by the directors or the Company, or otherwise), and which might reasonably influence a person in determining whether he would or would not become a shareholder in the Company; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the Company knowingly issuing the same, as regards any person taking shares in the Company on the faith of such prospectus, unless he has had notice of such contract.

Notices.

Service of notices on Company. 89. Any summons, notice, order, or other document required to be served upon the Company may be served by leaving the same, or sending it through the post by a registered letter addressed to the Company, at their registered office; and any notice to the Registrar of Joint-Stock Companies may be served by sending it to him through the post by a registered letter, or by delivering it to him, or by leaving it for him at his office.

Rules as to notices by letter. 90. Every document to be served by post on the Company shall be posted in such time as to admit of its being delivered in the due

course of delivery within the period (if any) prescribed for the service thereof; and, in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a registered letter into the post office.

Authentication of notices by Company. 91. Any summons, notice, order, or proceeding requiring authentication by the Company may be signed by any director, secretary, or other authorised officer of the Company, and need not be under the common seal of the Company; and the same may be in writing or in print, or partly in writing and partly in print.

Legal Proceedings.

Evidence of proceedings at meetings. 92. Every Company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the Company and of the directors or managers of the Company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings. Until the contrary is proved, every general meeting of the Company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had, and all appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications. *Explanation.* Nothing in this section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

Provision as to costs in suits brought by certain limited Companies. 93. Where a limited Company is plaintiff in any suit, if it appears from the evidence adduced that there is reason to believe that, if the defendant be successful in his defence, the assets of the Company will be insufficient to pay his costs, any Judge having jurisdiction in the matter may require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Plaint in suits against members. 94. In any suit brought by the Company against any member to recover any call or other moneys due from such member in his character of member it shall be sufficient to allege that the defendant is a member of the Company and is indebted to the Company in respect of a call made or other moneys due whereby a suit has accrued to the Company.

Alteration of Forms.

Forms to be used. Governor General in Council may alter forms. 95. The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer. The Governor General in Council may, from time to time, make such alterations in the tables and forms contained in the first schedule hereto, so that he does not increase the amount of fees payable to the Registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as he deems requisite. Any such table or form, when altered, shall be published in the Gazette of India, and, upon such publication being made, such table or form shall have the same force as if it were included in the schedule to this Act; but no alteration made by the Governor General in Council in the table marked A contained in the first schedule shall affect any Company registered prior to the date of such alteration, or repeal, as respects such Company, any portion of such table.

Arbitrations.

Power for Companies to refer matters to arbitration. 96. Any Company under this Act may, from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration any matter whatsoever in dispute between itself and any other Company or person; and the Companies, parties to the arbitration, may delegate to the person or persons, to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or deter-

mined by the Companies themselves, or by the directors or other managing body of such Companies.

Power to alter or revoke agreements for reference. 97. The Companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter, or revoke any agreement for reference in accordance with this Act theretofore entered into between the Companies, or any of the terms, conditions, or stipulations thereof.

Agreements to be carried into effect. 98. Every reference or agreement in accordance with this Act, except so far as it is, from time to time, revoked or modified in accordance with this Act, shall bind the Companies, and may and shall be carried into full effect.

Reference to arbitrator. 99. Where the Companies agree, the reference shall be made to a single arbitrator.

Reference to two or more arbitrators. 100. Except where the Companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, to wit: Where there are two Companies, the reference shall be made to two arbitrators; Where there are three or more Companies, the reference shall be made to so many arbitrators as there are Companies.

Appointment of arbitrators by Companies. 101. Where there are to be two or more arbitrators, every Company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other Company or Companies.

Appointment of arbitrators by Local Government. 102. Where there are to be two or more arbitrators, if any of the Companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government, instead of the Company so failing to appoint an arbitrator, may appoint an arbitrator. The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the Company so failing.

Appointment of arbitrators by Companies to supply vacancies. 103. Where the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the Company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

Appointment of arbitrators by Local Government to supply vacancies. 104. Where the Company, by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit or failing to act, fails to make the appointment within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government may appoint an arbitrator. The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the Company so failing.

Appointment of arbitrator not revocable. 105. When any appointment of an arbitrator is made, the Company making the appointment shall have no power to revoke the same without the previous consent in writing of the other Company or every other Company in writing under their common seal.

Appointment of umpire by arbitrators. 106. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

Appointment of umpire by Local Government. 107. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the Companies or any of them, the Local Government may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators.

Appointment of umpire by arbitrators to supply vacancy. 108. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

Appointment of umpire by Local Government to supply vacancy. 109. If the arbitrators fail to appoint an umpire within seven days after notice in writing to

them of the decease, incapacity, unfitness, or failure to act of their umpire, then, on the application of the Companies or any of them, the Local Government may appoint an umpire. The umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing.

Succeeding arbitrators and umpires to have powers of predecessors. 110. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Reference to umpire. 111. Where there are two or more arbitrators, if they do not within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

Power for arbitrators, etc., to call for books, etc., and examine witnesses on oath. 112. The arbitrator, and the arbitrators and the umpire, respectively, may call for the production of any documents or evidence in the possession or power of the Companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the Companies respectively on oath.

Procedure in the arbitration. 113. Except where and as the Companies otherwise agree, the arbitrator, and the arbitrators and the umpire respectively, may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Arbitration may proceed in absence of Companies. 114. The arbitrator, and the arbitrators and the umpire, respectively, may proceed in the absence of all or any of the Companies in every case in which, after giving notice in that behalf to the Companies respectively, the arbitrator, or the arbitrators or the umpire, shall think fit so to proceed.

Several awards may be made. 115. The arbitrator, and the arbitrators and the umpire, respectively, may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred. Every such award on part of the matters shall, for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or, in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

Awards made in due time to bind all parties. 116. The award of the arbitrator, or of the arbitrators or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the Companies within such a time as the Companies agree on, or failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator or the arbitrators or the umpire, shall be binding and conclusive on all the Companies.

Power for umpire to extend period for making his award. 117. Provided always that (except where and as the Companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made. If it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

Awards not to be set aside for informality. 118. No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.

Awards to be obeyed. 119. Except only so far as the Companies bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted, or suffered shall be done, omitted or suffered accordingly.

Agreements, arbitrations and awards to have effect. 120. Full effect shall be given by the Courts according to their respective jurisdictions, and by the Companies respectively and otherwise, to all agreements, references, arbitrations, and awards in accordance with this Act; and the performance or observance thereof may, where the Courts think fit, be compelled by any process against the Companies respectively

or their respective property that the Courts or any Judge thereof shall direct, and where requisite frame, for the purpose.

Costs of arbitration and award. 121. Except where and as the Companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators and the umpire, respectively.

Payment of costs. 122. Except where and as the Companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the Companies in equal shares, and in other respects the Companies shall bear their own respective costs.

Submission to arbitration to be filed in Court. 123. On the application of any party interested, the submission to any such arbitration may be filed in the High Court, and an order of reference may be made thereon, with any directions the Court thinks fit; and the provisions of the Code of Civil Procedure shall, so far as the same are applicable, apply to every such order and to all proceedings there under.

Part IV. Winding-up of Companies and Associations under this Act.

Preliminary.

Meaning of "contributory." 124. The term "contributory" shall mean every person liable to contribute to the assets of a Company under this Act in the event of the same being wound up; it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Nature of liability of contributory. 125. The liability of any person to contribute to the assets of a Company under this Act in the event of the same being wound up shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful, in the case of the insolvency of any contributory, to prove against his estate the estimated value of his liability to future calls, as well as calls already made. No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes situate outside the towns of Calcutta, Madras, and Bombay.

Contributories in cases of death. 126. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and devisees shall be liable in due course of administration to contribute to the assets of the Company in discharge of the liability of such deceased contributory; and such personal representatives, heirs and devisees shall be deemed to be contributories accordingly.

Contributories in case of insolvency. 127. If any contributory becomes insolvent, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such insolvent for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to [proof] against the estate of such insolvent, or otherwise to allow, to be paid out of his assets in due course of law, any moneys due from such insolvent in respect of his liability to contribute to the assets of the Company being wound up.

Winding-up by Court.

Circumstances under which Company may be wound up by Court. 128. A Company under this Act may be wound up by the Court as hereinafter defined under the following circumstances (that is to say): a) Whenever the Company has passed a special resolution requiring the Company to be wound up by the Court; b) Whenever the Company does not commence its business within a year from its incorporation or suspends its business for the space of a whole year; c) Whenever the members are reduced in number to less than seven; d) Whenever the Company is unable to pay its debts; e) Whenever for any other reason of a like nature the Court is of opinion that it is just and equitable that the Company should be wound up.

Company when deemed unable to pay its debts. 129. A Company under this Act shall be deemed to be unable to pay its debts: a) Whenever a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at its registered office, a demand under his hand requiring the Company to pay the sum

so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor; b) Whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company is returned unsatisfied in whole or in part; c) Whenever it is proved to the satisfaction of the Court that the Company is unable to pay its debts

Definition of "the Court." Definition of "debts." 130. The expression "the Court" as used in this Part of this Act shall mean the principal Court having original civil jurisdiction in the place in which the registered office of the Company is situate, unless in the regulations for the management of the Company it shall be stipulated that the Company, if wound up, shall be wound up by the High Court of Judicature at Fort William, Madras, or Bombay (as the case may be), or by the Chief Court of the Punjab, in which case the word "Court" shall mean the said High Court or Chief Court (as the case may be) in the exercise of its original civil jurisdiction. The expression "debts" as used in this Part of this Act means debts actually due, of which the creditor could claim immediate payment, except in the case of a Company issuing or liable under policies of assurance upon human life within British India, or granting annuities upon human life within British India. In the case of such a Company (hereinafter called a life-assurance Company), the expression "debts," as so used, includes also contingent or prospective liability under policies and annuity and other existing contracts.

Application for winding-up to be made by petition. 131. Any application to the Court for the winding-up of a Company under this Act shall be by petition, which may be presented by the Company, or by any one or more creditor or creditors, contributory or contributories, of the Company, or by all or any of the above parties, together or separately. The petition must allege facts which, if proved, will justify an order for winding-up the Company. Every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the Company in the same manner as if it had been made upon the joint petition of a creditor and a contributory. In the case of a life-assurance Company the Court shall not give a hearing to the petition until security for costs for such amount as the Judge thinks reasonable is given, and until a *prima facie* case is also established to the satisfaction of the Judge; and where the Company has an uncalled capital of an amount sufficient, with the future premiums receivable by the Company, to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time to enable the uncalled capital, or a sufficient part thereof, to be called up; and, if at the end of the original or any suspended time for which the proceedings have been suspended such an amount has not been realised by means of calls as with the already invested assets is equal to the liabilities, an order shall be made on the petition as if the Company had been proved to be unable to pay its debts. *Explanation.* Nothing in this section authorises the presentation of a petition by a member of a Company who is indebted to the Company in respect of a call made, or other moneys due.

Contributory when not qualified to present winding-up petition. 132. No contributory of a Company under this Act shall be capable of presenting a petition for winding-up such Company unless the members of the Company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder: Provided that, where a share has, during the whole or any part of the six months, been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the contributory.

Commencement of winding-up by Court. 133. A winding-up of a Company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Court may grant injunction. 134. The Court may, at any time after the presentation of the petition for winding-up a Company under this Act, and before

making an order for winding-up the Company, upon the application of the Company or of any creditor or contributory of the Company, restrain further proceedings in any suit or proceeding against the Company, upon such terms as the Court thinks fit. The Court may also, at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the Company.

Course to be pursued by Court on hearing petition. 135. Upon hearing the petition, the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.

Suits to be stayed after order for winding-up. 136. When an order has been made for winding-up a Company under this Act, no suit or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose.

Copy of order to be forwarded to Registrar. 137. When an order has been made for winding-up a Company under this Act, a copy of such order shall forthwith be forwarded by the Company to the Registrar of Joint-Stock Companies, who shall make a minute thereof in his books relating to the Company. Such order shall be deemed to be notice of discharge to the servants of the Company, except when the business of the Company is continued.

Power of Court to stay proceedings. 138. Such Court may, at any time after an order has been made for winding-up a Company, upon the application of any creditor or contributory of the Company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Effect of order on share-capital of Company limited by guarantee. 139. When an order has been made for winding-up a Company limited by guarantee and having a capital divided into shares, any share-capital that may not have been called up shall be deemed to be assets of the Company and to be a debt due to the Company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Court may have regard to wishes of creditors or contributories. 140. The Court may, as to all matters relating to the winding-up, have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence, and may, if it thinks fit, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. In the case of creditors, regard is to be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company.

Official Liquidators.

Appointment of official liquidator. 141. For the purpose of conducting the proceedings in winding-up a Company and assisting the Court therein, there may be appointed a person or persons, to be called an official liquidator or official liquidators. The Court may appoint such person or persons either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators. In all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons. The Court may also determine whether any, and what, security is to be given by any official liquidator on his appointment. If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the Company shall be deemed to be in the custody of the Court. A receiver shall not be appointed of assets in the hands of an official liquidator.

Resignations, removals, filling up vacancies and compensation. 142. Any official liquidator may resign or be removed by the Court on due cause shown. Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court. There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more

liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

Style and duties of official liquidator. 143. The official liquidator shall be described by the style of the official liquidator of the particular Company in respect of which he is appointed, and not by his individual name. He shall take into his custody, or under his control, all the property, effects, and actionable claims to which the Company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the Company as may be imposed by the Court.

Powers of official liquidator. 144. The official liquidator shall have power, with the sanction of the Court, to do the following things: a) To bring or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the Company; b) To carry on the business of the Company so far as may be necessary for the beneficial winding-up of the same; c) To sell the immovable and moveable property of the Company by public auction or private contract, with power to transfer the whole thereof to any person or Company, or to sell the same in parcels; d) To do all acts, and to execute, in the name and on behalf of the Company, all deed, receipts and other documents, and for that purpose to use, when necessary, the Company's seal; e) To prove, rank, claim and draw a dividend in the matter of the insolvency of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of the insolvency, as a separate debt due from such insolvent, and rateably with the other separate creditors; f) To draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the Company; also to raise, upon the security of the assets of the Company, from time to time, any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill, hundi or note as aforesaid on behalf of the Company shall have the same effect with respect to the liability of such Company as if such bill, [hundi] or note had been drawn, accepted, made or endorsed by or on behalf of such Company in the course of carrying on the business thereof; g) To take out, if necessary, in his official name, letters of administration to the estate of any deceased contributory, and to do, in his official name, any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act cannot be conveniently done in the name of the Company; and, in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself: Provided that nothing herein contained shall be deemed to affect the rights, duties and privileges of the Administrators General of Bengal, Madras and Bombay, respectively; h) To do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets.

Discretion of official liquidator. 145. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Appointment of attorney or vakil to official liquidator. 146. The official liquidator may, with the sanction of the Court, appoint an attorney or vakil to assist him in the performance of his duties: Provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

Ordinary Powers of Court.

Collection and application of assets. 147. As soon as may be after making an order for winding-up the Company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of section 58, and shall cause the assets of the Company to be collected and applied in discharge of its liabilities existing at the date of the said order.

Provision as to representative contributories. 148. In settling the list of contributories, the Court shall distinguish between person who are contributories in their own right, and persons who are contributories as being representatives of, or being liable to the debts of, others.

Power of Court to require delivery of property. 149. The Court may, at any time after making an order for winding-up a Company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker or agent or officer of the Company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate or effects which happen to be in his hands for the time being, and to which the Company is *prima facie* entitled.

Power of Court to order payment of debts by contributory. 150. The Court may, at any time after making an order for winding-up the Company, make an order on any contributory for the time being settled on the list of contributories directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents to the Company, exclusive of any moneys which he, or the estate of the person whom he represents, may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Act. The Court may, in making such order, when the Company is not limited, allow to such contributory, by way of set-off, any moneys due to him or the estate which he represents from the Company on any independent dealing or contract with the Company, but not any moneys due to him as a member of the Company in respect of any dividend or profits: Provided that, when all the creditors of any Company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the Company may be allowed to him by way of set-off against any subsequent call or calls. In the event of the winding-up of any limited Company, the Court, if it thinks fit, may make to any director or manager of such Company whose liability is unlimited the same allowance by way of set-off as under this section it may make to a contributory where the Company is not limited.

Power of Court to make calls. 151. The Court may, at any time after making an order for winding-up a Company, and either before or after it has ascertained the sufficiency of the assets of the Company, make calls on, and order payment thereof by, all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sum, it deems necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves. The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Power of Court to order payment into Bank. 152. The Court may order any contributory, purchaser or other person from whom money is due to the Company to pay the same into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, as the case may be, or any branch thereof respectively, to the account of the official liquidator instead of to the official liquidator; and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account with Court. 153. All moneys, bills, hundis, notes and other securities paid and delivered into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, or any branch thereof respectively, in the event of a Company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same as the Court may direct.

Provision in case of representative contributory not paying moneys ordered. 154. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the property of such deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereof of the moneys due.

Order conclusive evidence. 155. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due; and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever.

Court may exclude creditors not proving within certain time. 156. The Court may fix a certain day or certain days on or within which creditors of the Company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Court to adjust rights of contributories. 157. The Court shall adjust the rights of contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Court to order costs. 158. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the Company of the costs, charges and expenses incurred in winding-up any Company in such order of priority as the Court thinks just.

Dissolution of Company. 159. When the affairs of the Company have been completely wound up, the Court shall make an order that the Company be dissolved from the date of such order, and the Company shall be dissolved accordingly.

Registrar to make minute of dissolution of Company. 160. Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such Company.

Penalty for not reporting dissolution of Company. 161. If the official liquidator makes default in reporting to the Registrar, in the case of a Company being wound up by the Court, the order that the Company be dissolved, he shall be liable to a penalty not exceeding one hundred rupees for every day during which he is so in default.

Extraordinary powers of Court.

Power of Court to summon persons before it suspected of having property of Company. 162. The Court may, after it has made an order for winding-up the Company, summon before it any officer of the Company, or person known or suspected to have in his possession any of the estate or effects of the Company, or supposed to be indebted to the Company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects of the Company. If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination. The Court may require any such officer or person to produce any documents in his custody or power relating to the Company. Nevertheless, in cases where any person claims any lien on documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Examination of parties by Court. 163. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid concerning the affairs, dealings, estate or effects of the Company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Power to arrest contributory about to abscond or to remove or conceal any of his property. 164. The Court may, at any time before or after it has made an order for winding-up a Company, upon proof being given that there is probable cause for believing that any contributory to such Company is about to quit British India or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the Company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Power of Court cumulative. 165. Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the Company, for the recovery of any call or other sums due from such contributory or debtor, or his estate; and such proceedings may be instituted accordingly.

Enforcement of, and Appeal from, Orders.

Power to enforce orders. 166. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

Order made in any Court to be enforced by other Courts. 167. Any order made by a Court for or in the course of the winding-up of a Company under this Act shall be enforced in any part of British India, other than that in which such Court is situate, in the Court that would have had jurisdiction in respect of such Company if the registered office of the Company had been situate in such other part, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

Mode of dealing with orders to be enforced by other Courts. 168. Where any order or decree made by one Court is required to be enforced by another Court as hereinbefore provided, a certified copy of the order or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order or decree having been made; and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order or decree, in the same manner as if it were the order or decree of the Court enforcing the same.

Appeals from orders. 169. Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding-up of a Company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction, that no such re-hearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given under the Code of Civil Procedure unless such time is extended by the Court of appeal.

Judicial notice to be taken of signature of officers. 170. In all proceedings under this Part of this Act, every Court, Judge and person judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of any other Court, and also of the official seal of any other Court, when such seal is appended to any document made, issued or signed under the provisions of this Part of this Act, or any official copy thereof.

Special Commissioners for receiving evidence. 171. The Judges of the District Courts, who sit at places more than twenty English miles from the usual place of sitting of the High Court, shall be Commissioners for the purpose of taking evidence under this Act in cases where any Company is wound up in a High Court; and it shall be lawful for the High Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed Commissioner, although such Commissioner is out of the jurisdiction of the Court that made the order or decree for winding-up the Company. Every such Commissioner shall, in addition to any power of summoning and examining witnesses and requiring the production or delivery of documents and certifying or punishing defaults by witnesses, which he might lawfully exercise as a Judge of a District Court, have, in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the Court which made the order for winding-up the Company has; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

Affidavits, etc., may be sworn in British India, Great Britain or Ireland, or abroad, before any competent Court or person. 172. If any affidavit, affirmation or declaration, required to be sworn or made under the provisions or for the purposes of this Part of this Act, be lawfully sworn or made in British India, or in Great Britain or Ireland, or in any colony, island, plantation or place under the dominion of Her Majesty in foreign parts, before any Court, Judge or person lawfully authorized to take and receive affidavits, affirmations or declarations, or before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts out of Her Majesty's dominions, all Courts, Judges, Justices, Commissioners and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit, affirmation or declaration, or to any other document to be used for the purposes of this Part of this Act.

Voluntary Winding-up of Company.

Circumstances under which Company may be wound up voluntarily. 173. A Company under this Act may be wound up voluntarily: a) Whenever the period, if any, fixed for the duration of the Company by the articles of association expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the articles of association that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound up voluntarily; b) Whenever the Company has passed a special resolution requiring the Company to be wound up voluntarily; c) Whenever the Company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the Company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same: For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

Commencement of voluntary winding-up. 174. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising such winding-up. When the winding-up is in pursuance of a special resolution, it shall be deemed to commence at the time of the passing, under section 77, of the confirmatory resolution.

Effect of voluntary winding-up on status of Company. 175. Whenever a Company is wound up voluntarily the Company shall, from the date of the commencement of such winding-up, cease to carry on its business except in so far as may be required for the beneficial winding-up thereof; and all transfers of shares except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the Company, taking place after the commencement of such winding-up, shall be void; but its corporate state and all its corporate powers shall, notwithstanding that its regulations otherwise provide, continue until the affairs of the Company are wound up.

Notice of resolution to wind-up voluntarily. 176. Notice of any special resolution or extraordinary resolution passed for winding-up a Company voluntarily shall be given by advertisement in the local official Gazette, and also in some newspaper (if any) circulating in the place where the registered office of the Company is situate.

Consequence of voluntary winding-up. 177. The following consequences shall ensue upon the voluntary winding-up of a Company: a) The assets of the Company shall be applied in satisfaction of its liabilities *pari passu* as they exist at the commencement of the winding-up, and subject thereto shall, unless the regulations of the Company otherwise provide, be distributed amongst the members according to their rights and interests in the Company; b) Liquidators shall be appointed for the purpose of winding-up the affairs of the Company and distributing the assets; c) The Company in general meeting shall appoint such persons as it thinks fit to be liquidators and may fix the remuneration to be paid to them; d) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him; e) upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the Company in general meeting, or the liquidators, may sanction the continuance of such powers; f) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two; g) The liquidators may, without the sanction of the Court, exercise all powers by this Act given to the official liquidators; h) The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the Company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories; i) The liquidators may, at any time after the passing of the resolution for winding-up the Company, and before they have ascertained the sufficiency of the assets of the Company, call on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that some of

the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same; j) The liquidators shall pay the debts of the Company, and adjust the right of the contributories amongst themselves.

Effect of winding-up on share-capital of Company limited by guarantee. 178. Where a Company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share-capital that may not have been called up shall be deemed to be assets of the Company, and to be debt due from each member to the Company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

Power of Company to delegate authority to appoint liquidators. 179. A Company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised. Any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the Company.

Arrangement when binding on creditors. 180. Any arrangement which a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, shall have entered into with its creditors shall be binding on the Company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Power of creditor or contributory to appeal. 181. Any creditor or contributory of a Company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Power for liquidators or contributories in voluntary winding-up to apply to Court. 182. Where a Company is being wound up voluntarily, the liquidators or any contributory of the Company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls or in respect of any other matter, all or any of the powers which the Court might exercise if the Company were being wound up by the Court. Any such application may be made by motion. The Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

Power of liquidators to call general meeting. 183. Where a Company is being wound up voluntarily, the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the Company for the purpose of obtaining the sanction of the Company by special resolution or extraordinary resolution, or for any other purposes they think fit. In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the Company at the end of the first year and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted, during the preceding year.

Power to fill up vacancy in office of liquidators. 184. If any vacancy occurs in the office of liquidators appointed by the Company, by death, resignation, or otherwise, the Company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy; and a general meeting for the purpose of filling-up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the Company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the Company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the Company, be determined by the Court.

Power of Court to appoint liquidators. 185. If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the

application of a contributory, appoint a liquidator or liquidators. The Court may also, on due cause shown, remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding-up.

Liquidators on conclusion of winding-up to make up an account. 186. As soon as the affairs of the Company are fully wound-up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the property of the Company disposed of: and thereupon they shall call a general meeting of the Company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators. The meeting shall be called by advertisement specifying the time, place, and object of such meeting, and such advertisement shall be published one month at least previously to the meeting in the manner specified in section 176.

Liquidators to report meeting to Registrar. 187. The liquidators shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held; and, on the expiration of three months from the date of the registration of such return, the Company shall be deemed to be dissolved. If the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding fifty rupees for every day during which such default continues.

Costs of voluntary liquidation. 188. All costs, charges, and expenses properly incurred in the voluntary winding-up of a Company, including the remuneration of the liquidators, shall be payable out of the assets of the Company in priority to all other claims.

Saving of rights of creditors. 189. The voluntary winding-up of a Company shall not be a bar to the right of any creditor of such Company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Power of Court to adopt proceedings of voluntary winding-up. 190. Where a Company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the Company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Winding-up subject to the supervision of the Court.

Power of Court, on application, to direct winding-up subject to supervision. 191. When a resolution has been passed by a Company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions, as the Court thinks just.

Petition for winding-up subject to Supervision. 192. A petition praying wholly or in part that a voluntary winding-up shall continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be petition for winding-up the Company by the Court.

Court may have regard to wishes of creditors. 193. The Court may, in determining whether a Company is to be wound up altogether by the Court, or subject to the supervision of the Court, in the appointment of a liquidator or of liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. In the case of creditors, regard shall be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory, by the regulations of the Company.

Power to Court to appoint additional liquidator in winding-up subject to supervision. 194. Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order or in any subsequent order,

appoint any additional liquidator. Any liquidator so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been appointed by the Company. The Court may, from time to time, remove any liquidator so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Effect of order of Court for winding-up subject to supervision. 195. Where an order is made for a winding-up subject to the supervision of the Court, the liquidator appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the Company were being wound up altogether voluntarily. Save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding-up the Company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the Company altogether by the Court. In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding-up subject to the supervision of the Court.

Appointment in certain cases of voluntary liquidators to office of official liquidators. 196. Where an order has been made for the winding-up of a Company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the Company to be wound up compulsorily, the Court may, in such last-mentioned order or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidators.

Supplemental Provisions.

Dispositions after commencement of winding-up avoided. 197. Where any Company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property of the Company, and every transfer of shares or alteration in the status of the members of the Company, made between the commencement of the winding-up and the order for winding-up shall, unless the Court otherwise orders, be void.

Books of Company to be evidence. 198. Where any Company is being wound up, all books, accounts and documents of the Company and of the liquidators shall, as between the contributories of the Company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

Disposal of books, accounts, and documents of Company. 199. Where any Company has been wound up under this Act and is about to be dissolved, the books, accounts, and documents of the Company and of the liquidator may be disposed of in the following way, that is to say, where the Company has been wound up by, or subject to the supervision of, the Court, in such way as the Court directs, and, where the Company has been wound up voluntarily, in such way as the Company by an extraordinary resolution directs. But, after the lapse of five years from the date of such dissolution, no responsibility shall rest on the Company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

Inspection of books. 200. Where an order has been made for winding-up a Company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the Company of its books and papers as the Court thinks just, and any books and papers in the possession of the Company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

Priority of debts. 200A. 1. In the distribution of the assets of any Company being wound up under this Act, there shall be paid in priority to all other debts: a) All revenue, taxes, cesses, and rates, whether payable to Her Majesty or to a local authority, due from the Company at the date of the commencement of the winding-up, and having become due and payable within the twelve months next before that date; b) All wages or salary of any clerk or servant in respect of service

rendered to the Company within the two months next before the commencement of the winding-up, not exceeding one thousand rupees for each clerk or servant; and c) All wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered to the Company within the two months next before the commencement of the winding-up. 2. The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the assets of the Company are insufficient to meet them, in which case they shall abate in equal proportions among themselves. 3. Subject to the retention of such sums as may be necessary for the cost of administration or otherwise, the liquidator or official liquidator shall discharge the foregoing debts forthwith, so far as the assets of the Company are and will be sufficient to meet them, as and when the assets come into the hands of the liquidator or official liquidator.

General scheme of liquidation may be sanctioned. 201. The liquidator may, with the sanction of the Court where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidator may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, whereby the Company may be rendered liable.

Power to compromise. 202. The liquidator may, with the sanction of the Court where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, subsisting or supposed to subsist between the Company and any contributory or alleged contributory, or other debtor or person apprehending liability to the Company, and all questions in any way relating to or affecting the assets of the Company, or the winding-up of the Company, generally upon such terms as may be agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of or any such calls, debts, or liabilities.

Where compromise proposed, Court may order a meeting of creditors, etc., to decide as to such compromise. 203. Where any compromise or arrangement shall be proposed between a Company which is, at the commencement of this Act or afterwards, in the course of being wound up either voluntarily or by or under the supervision of the Court, and the creditors of such Company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and, if a majority in number, representing three-fourths in value, of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said Company.

Power for liquidators to accept shares, etc., as a consideration for sale of property of Company. 204. Where any Company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another Company, the liquidators of the first-mentioned Company may, with the sanction of a special resolution of the Company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive, in compensation or part compensation for such transfer or sale, shares, debentures, policies, or other like interests in such other Company, for the purpose of distribution amongst the members of the Company being wound up, or may enter into any other arrangement whereby the members of the Company being wound up may, in lieu of receiving cash, shares, debentures, policies, or other like interests, or in addition thereto participate in the profits of, or receive any other benefit from, the purchasing Company. Any sale made, or arrangement entered into, by the liquidator in pursuance of this section shall be binding on the

members of the Company being wound up; subject to this proviso that, if any member of the Company being wound up, who has not voted in favour of the special resolution passed by the Company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the Company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may, by writing addressed and left as last aforesaid, require the liquidator to do one of the following things as the liquidator may prefer (that is to say): either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned; such purchase-money to be paid before the Company is dissolved, and to be raised by the liquidator in such manner as may be determined by special resolution. No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to, or concurrently with, any resolution for winding-up the Company or for appointing liquidators; but, if an order be made within a year for winding-up the Company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Mode of determining price. 205. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration under the provisions next hereinafter contained.

Appointment of arbitrator when questions are to be determined by arbitration. 206. When any dispute so directed to be settled by arbitration has arisen, then unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred. After any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation. If for the space of fourteen days after any such dispute has arisen, and after a request in writing has been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters in dispute; and in such case the award or determination of such single arbitrator shall be final.

Vacancy of arbitrator to be supplied. 207. If, before the matters so referred are determined, any arbitrator appointed by either party die, or become incapable or refuse, or for seven days neglect, to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

Appointment of umpire. 208. Where more arbitrators than one have been appointed, they shall, before entering upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ. If such umpire die, or refuse, or for seven days neglect, to act, they shall forthwith, after such death, refusal, or neglect, appoint another umpire in his place; and the decision of every such umpire, on the matters so referred to him, shall be final.

Power of arbitrators to call for books, etc. 209. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath.

Costs to be in discretion of arbitrators. 210. The costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpire, as the case may be.

Submission to arbitration may be filed in Court. 211. On the application of either of the parties, the submission to any such arbitration may be filed in the Court, and an order of reference may be made thereon; and the provisions of the

Code of Civil Procedure shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

Certain attachments, distresses, and executions to be void. 212. Where any Company is being wound up by the Court or subject to the supervision of the Court, any attachment, distress, or execution put in force, without the leave of the Court, against the estate or effects of the Company after the commencement of the winding-up shall be void. Nothing in this section applies to proceedings by the Government.

Fraudulent preference. 213. Every conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property, which would, if made or done by, or against any individual trader, be deemed, in the event of his insolvency, to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any Company, be deemed, in the event of such Company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such Company, and shall be invalid accordingly. For the purposes of this section the making of an application for winding-up a Company shall, in the case of a Company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding-up the Company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of insolvency in the case of an individual trader; and any conveyance or assignment made by any Company formed under this Act, of all its estate and effects to trustees for the benefit of all its creditors, shall be void.

Power of Court to assess damages against delinquent directors and officers. 214. Where, in the course of the winding-up of any Company under this Act, it appears that any past or present director, manager, official, or other liquidator, or any officer of such Company, has misapplied or retained in his own hands, or become liable or accountable for, any moneys of the Company, or been guilty of any misfeasance or breach of trust in relation to the Company, the Court may, on the application of any liquidator or of any creditor or contributory of the Company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any moneys so misapplied or retained, or for which such officer has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the Court thinks just. *Explanation I.* The banker of a Company is not, as such, an officer within the meaning of this section. *Explanation II.* Proceedings cannot be taken under this section against the representatives of a deceased officer.

Penalty on falsification of books. 215. If any director, officer, or contributory of any Company wound up under this Act destroys, mutilates, alters, falsifies, or fraudulently secretes any books, papers, writings, or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register, book of account, or other document belonging to the Company, with intent to defraud or deceive any person, every person so offending shall be punished with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five hundred rupees.

Prosecution of delinquent directors in case of winding-up by Court. 216. Where any order is made for winding-up a Company by the Court or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer, or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible, the Court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidators or the liquidators (as the case may be) to institute a prosecution for such offence, and may order the costs and expenses of such prosecution to be paid out of the assets of the Company.

Penalty for false evidence. 217. If any person, upon any examination upon oath authorised under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding-up of any Company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years and shall also be liable to fine.

Winding-up may be referred to District Court. 218. Where the High Court makes an order for winding up a Company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding-up the Company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court.

Transfer of winding-up from one District Court to another. 219. If during the progress of a winding-up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court, the High Court may transfer the same to such other Court, and thereupon the winding-up shall proceed in such other District Court.

Part V. Registration-office.

Constitution of registration-office. 220. The Registration of Companies under this Act shall be conducted as follows (that is to say): a) The Local Government may, after the sanction of the Governor General in Council to the creation of any such offices shall have been obtained, from time to time appoint such Registrars, Assistant Registrars, clerks, and servants as it may think necessary for the Registration of Companies under this Act, and remove them at pleasure; b) The Local Government may make such regulations as it thinks fit with respect to the duties to be performed by any such Registrars, Assistant Registrars, clerks and servants as aforesaid; c) The Local Government may from time to time determine the places at which offices for the registration of Companies are to be established, so that there be at all times maintained in each of the towns of Calcutta, Madras and Bombay at least one such office, and that no Company shall be registered except at an office within that part of British India in which, by the memorandum of association, the registered office of the Company is declared to be established; d) The Local Government may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of Companies; e) Every person may inspect the documents kept by the Registrar of Joint-Stock Companies. There shall be paid for such inspection such fees as may be directed by the Local Government, not exceeding one rupee for each inspection. Any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar. There shall be paid for such certificate of incorporation, certified copy or extract, such fees as the Local Government may direct, not exceeding three rupees for the certificate of incorporation, and not exceeding two annas for each hundred words of such copy or extract; f) The existing Registrar, Assistant Registrars, clerks and other officers and servants in the office for the registration of Joint-Stock Companies shall, during the pleasure of the Local Government, hold the offices and receive the salaries hitherto held and received by them; but they shall, in the execution of their duties, conform to any regulations that may be issued by the Local Government; g) There shall be paid to any Registrar, Assistant Registrar, clerk or servant that may hereafter be employed in the registration of Joint-Stock Companies such salaries as the Local Government may, with the sanction of the Governor General in Council, direct; h) Whenever any act is herein directed to be done to or by the Registrar of Joint-Stock Companies, such act shall, until the Local Government otherwise directs, be done to or by the existing Registrar of Joint-Stock Companies, or in his absence to or by such person as the Local Government may for the time being authorise. But, in the event of the Local Government altering the constitution of the existing registry-office, such act shall be done to or by such officer or officers, and at such place or places with reference to the local situation of the registered offices of the Companies to be registered, as the Local Government may appoint.

Part VI. Application of Act to Companies registered under the Joint-Stock Companies Acts.

Application of Act to Companies formed under Act XIX of 1857 or VII of 1860. 221. Subject as hereinafter mentioned, this Act, with the exception of Table A in the first schedule, shall apply to Companies formed and registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, in the same manner,

in the case of a limited Company, as if such Company had been formed and registered under this Act as a Company limited by shares, and, in the case of a Company other than a limited Company, as if such Company had been formed and registered as an unlimited Company under this Act; with this qualification that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them, and the power of altering regulations by special resolution given by this Act shall, in the case of any Company formed and registered under the said Acts or either of them, extend to altering any provisions contained in the table marked B annexed to Act No. XIX of 1857, and shall also, in the case of an unlimited Company formed and registered as last aforesaid, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that such regulations are contained in the memorandum of association.

Application of Act to Companies registered under Act XIX of 1857 or VII of 1860. 222. This Act shall apply to Companies registered but not formed under the said Acts or either of them, in the same manner as it is hereinafter declared to apply to Companies registered but not formed under this Act; with this qualification, that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them.

Mode of transferring shares. 223. Any Company registered under the said Acts or either of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the Company may direct.

Part VII. Companies authorised to register under this Act.

Companies capable of being registered. 224. With the exceptions made in the next following section, and subject to the regulations therein contained, every Company, existing at the time of the commencement of this Act, including any Company registered under either of the said Acts, consisting of seven or more members, and any Company hereafter formed in pursuance of any Act of Parliament or Act of the Governor General in Council other than this Act, or of Letters Patent, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited Company, or a Company limited by shares, or a Company limited by guarantee, and no such registration shall be invalid by reason that it has taken place with a view to the Company being wound up.

Regulations as to registration of existing Companies. 225. The following regulations shall be observed with respect to the registration of Companies under this Part of this Act (that is to say): a) No Company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council other than this Act, or by Letters Patent, and not being a Joint-Stock Company as hereinafter defined, shall register under this Act in pursuance of this Part thereof; b) No Company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council other than this Act, or by Letters Patent, shall register under this Act in pursuance of this Part thereof as an unlimited Company, or as a Company limited by guarantee; c) No life-assurance Company existing at the time of the commencement of this Act, and no Company that is not a Joint-Stock Company as hereinafter defined, shall in pursuance of this Part of this Act register under this Act as a Company limited by shares; d) No Company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by a majority of such of its members as may be present personally, or by a proxy in cases where proxies are allowed by the regulations of the Company, at some general meeting summoned for the purpose; e) Where a Company, not having the liability of members limited by Act of Parliament, or Act of the Governor General in Council, or by Letters Patent, is about to register as a limited Company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present personally or by proxy, at such last-mentioned general meeting; f) Where a Company is about to register as a Company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a

member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceased to be a member, and of the costs, charges and expenses of winding-up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount. In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the Company of which he is a member.

Definition of "Joint-Stock Company." 226. For the purposes of this Part of this Act, so far as the same relates to the description of Companies empowered to register as Companies limited by shares, a Joint-Stock Company shall be deemed to be a Company having a permanent paid up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such Company, when registered with limited liability under this Act, shall be deemed to be a Company limited by shares.

Requisitions for registration by Companies. 227. Previously to the registration, in pursuance of this Part of this Act, of any Joint-Stock Company, there shall be delivered to the Registrar the following documents (that is to say): a) A list showing the names, addresses and occupations of all persons who, on a day named in such list and not being more than six clear days before the day of registration, were members of such Company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number; b) A copy of any Act of Parliament or Act of the Governor General in Council, Royal Charter, Letters Patent, deed of settlement, contract of co-partnership or other instrument constituting or regulating the Company; c) If any such Joint-Stock Company is intended to be registered as a limited Company, the above list and copy shall be accompanied by a statement specifying the following particulars (that is to say): The nominal capital of the Company and the number of shares into which it is divided; The number of shares taken and the amount paid on each share; The name of the Company, with the addition of the word "limited" as the last word thereof; With the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

Requisitions for registration by existing Company not being a Joint-Stock Company. 228. Previously to the registration in pursuance of this Part of this Act of any Company not being a Joint-Stock Company, there shall be delivered to the Registrar a list showing the names, addresses and occupations of the directors or other managers (if any) of the Company, also a copy of any Act of Parliament, Act of the Governor General in Council, Letters Patent, deed of settlement, contract of co-partnership or other instrument constituting or regulating the Company, with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

Power for existing Company to register amount of stock instead of shares. 229. Where a Joint-Stock Company authorised to register under this Act has had the whole or any portion of its capital converted into stock, such Company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the Company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

Authentication of statements of existing Companies. 230. The lists of members and directors and any other particulars relating to the Company hereby required to be delivered to the Registrar shall be verified by declaration of the directors of the Company delivering the same, or any two of them, or of any two other principal officers of the Company, made before a Justice of the Peace or a District Judge.

Registrar may require evidence as to nature of Company. 231. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing Company is or not a Joint-Stock Company as herein-before defined.

On registration of banking Company with limited liability, notice to be given to customers. 232. Every banking Company existing at the date of the passing of this Act which registers itself as a limited Company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm having a banking account with the Company. Such notice shall be given either by delivering the same to such person or firm or leaving the same, or putting the same into the post addressed to him or them, at such address as shall have been last communicated or otherwise become known as his or their address to or by the Company. In case the Company omits to give any such notice as is hereinbefore required to be given, then, as between the Company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain Companies from payment of fees. 233. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of any Company in cases where such Company is not registered as a limited Company, or where, previously to its being registered as a limited Company, the liability of the shareholders was limited by some Act of Parliament, or Act of the Governor General in Council, or by Letters Patent.

Company to change name. 234. Any Company authorised by this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited."

Certificate of registration of existing Companies. 235. Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked B and C in the first schedule hereto, the Registrar shall certify under his hand that the Company so applying for registration is incorporated as a Company under this Act, and in the case of a limited Company that it is limited; and thereupon such Company shall be incorporated, and shall have perpetual succession and a common seal.

Certificate to be evidence of compliance with Act. 236. A certificate of incorporation given at any time to any Company registered in pursuance of this Part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the Company is authorised to be registered under this Act as a limited or unlimited Company, as the case may be; and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the Company is incorporated under this Act.

Transfer of property to Company. 237. All such property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims, as may belong to or be vested in the Company at the date of its registration under this Act, shall, on registration, pass to and vest in the Company as incorporated under this Act for all the estate and interest of the Company therein.

Registration under this Act not to affect obligations incurred previously to registration. 238. The registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the liability of such Company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of, such Company previously to such registration.

Continuation of existing suits. 239. All such suits and other legal proceedings as may at the time of the registration of any Company registered in pursuance of this Part of this Act have been commenced by or against such Company or the public officer or any member thereof may be continued in the same manner as if such registration had not taken place. Nevertheless, execution shall not issue against the effects of any individual member of such Company upon any decree or order obtained in any suit or proceeding so commenced as aforesaid; but, in the event of the property and effects of the Company being insufficient to satisfy such decree or order, an order may be obtained for winding-up the Company.

Effect of registration under Act. 240. When a Company is registered under this Act in pursuance of this Part thereof, all provisions contained in any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co-partnership, Letters Patent or other instrument constituting or regulating the

Company, including, in the case of a Company registered as a Company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the Company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such Company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following (that is to say): a) That table A in the first schedule to this Act shall not, unless adopted by special resolution, apply to any Company registered under this Act in pursuance of this Part thereof; b) That the provisions of this Act relating to the numbering of shares shall not apply to any Joint-Stock Company whose shares are not numbered; c) That no Company shall have power to alter any provisions contained in any Act of Parliament, Act of the Legislative Council or Act of the Governor General in Council relating to the Company; d) That no Company shall have power, without the sanction of the Governor General in Council, to alter any provision contained in any Letters Patent relating to the Company; e) In the event of the Company being wound up, every person shall be a contributory in respect of the debts and liabilities of the Company contracted prior to registration, who is liable to pay or contribute to the payment of any debt or liability of the Company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the Company, so far as relates to such debts or liabilities as aforesaid. Every such contributory shall be liable to contribute to the assets of the Company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid. In the event of the death or insolvency of any such contributory as last aforesaid, the provisions hereinbefore contained with respect to the representatives, heirs and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply; f) Nothing herein contained shall authorise any Company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the Company, as would, if such Company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorised to be altered by this Act: But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any Company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the Company.

Power of Court to restrain further proceedings. 241. The Court may, at any time after the presentation of a petition for winding-up a Company registered in pursuance of this Part of this Act, and before making an order for winding-up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or legal proceeding against any contributory of the Company as well as against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

Order for winding-up Company. 242. Where an order has been made for winding-up a Company registered in pursuance of this Part of this Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit or other legal proceeding shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court and subject to such terms as the Court may impose.

Part VIII. Application of Act to Unregistered Companies.

Winding-up unregistered Companies. 243. Subject as hereinafter mentioned, any Partnership, Association or Company, except Railway Companies incorporated by Act of Parliament or Act of the Governor General in Council, consisting of more than seven members and not registered under this Act, and hereinafter included under the term "unregistered Company," may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such Company, with the following exceptions and additions: 1. An unregistered Company shall, for the purpose of determining the Court having jurisdiction in the matter of the

winding-up, be deemed to be registered in that part of British India where its principal place of business is situate, or, if it has a principal place of business situate in more than one part of British India, then in each part of British India where it has a principal place of business. Moreover the principal place of business of an unregistered Company, or (where it has a principal place of business situate in more than one part of British India) such one of its principal places of business as is situate in that part of British India in which proceedings are being instituted, shall, for all the purposes of the winding-up of such Company, be deemed to be the registered office of the Company; 2. No unregistered Company shall be wound up under this Act voluntarily, or subject to the supervision of the Court; 3. The circumstances under which an unregistered Company may be wound up are as follows (that is to say): a) Whenever the Company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs; b) Whenever the Company is unable to pay its debts; c) Whenever the Court is of opinion that it is just and equitable that the Company should be wound up; 4. An unregistered Company shall, for the purposes of this Act, be deemed to be unable to pay its debts: a) Whenever a creditor to whom the Company is indebted, by assignment or otherwise, in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at the principal place of business of the Company or by delivering to the secretary or some director or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor; b) Whenever any suit or other proceeding has been instituted against any member of the Company for any debt or demand due or claimed to be due from the Company, or from him in his character of member of the Company, and notice in writing of the institution of such suit or other legal proceeding having been served upon the Company by leaving the same at the principal place of business of the Company, or by delivering it to the secretary or some director, manager or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, the Company has not, within ten days after service of such notice, paid, secured or compounded for such debt or demand, or procured such suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same; c) Whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company, or any member thereof as such or against any person authorised to be sued as nominal defendant on behalf of the Company, is returned unsatisfied; d) Whenever it is otherwise proved to the satisfaction of the Court that the Company is unable to pay its debts.

Who to be deemed a contributory in the event of Company being wound up. 244. In the event of an unregistered Company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the Company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the Company. Every such contributory shall be liable to contribute to the assets of the Company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid. In the event of the death or insolvency of any contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs and devisees of a deceased contributory, and to the assignees of an insolvent contributory, shall apply.

Power of Court to restrain further proceedings. 245. The Court may, at any time after the making of an application for winding-up an unregistered Company, and before making an order for winding-up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or proceeding against any contributory of the Company, or against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

Effect of order for winding-up Company. 246. Where an order has been made for winding-up an unregistered Company, in addition to the provisions herein-

before contained in the case of Companies formed under this Act, it is hereby further provided that no suit shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court and subject to such terms as the Court may impose.

Provision in case of unregistered Company. 247. If any unregistered Company has no power to sue and be sued in a common name, or if, for any reason, it appears expedient, the Court may, by the order made for winding-up such Company or by any subsequent order, direct that all such property, moveable and immoveable, including all interests, claims and rights in, to and out of property, moveable and immoveable, and including actionable claims, as may belong to or be vested in the Company, or to or in any person or persons on trust for or on behalf of the Company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names; and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names, and after giving such indemnity, as the Court directs, bring or defend any suits or other legal proceedings relating to any property vested in him or them, or any suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding-up the Company and recovering the property thereof.

Provisions of this Part of Act cumulative. 248. The provisions made by this Part of this Act with respect to unregistered Companies shall be deemed to be made in addition to, and not in restriction of, any provisions hereinbefore contained with respect to winding-up Companies by the Court. The Court or official liquidator may, in addition to anything contained in this Part of this Act, exercise any powers or do any act in the case of unregistered Companies which might be exercised or done by it or him in winding-up Companies formed under this Act; but an unregistered Company shall not, except in the event of its being wound up, be deemed to be a Company under this Act, and then only to the extent provided by this Part of this Act.

Part IX. Miscellaneous Provisions.

Company not to buy its own shares. 249. No Company under this Act shall have power to buy its own shares.

Saving of existing proceedings for winding-up. 250. Where, previously to the commencement of this Act, an order has been made for winding-up a Company under the Indian Companies Act, 1866, or a resolution has been passed for winding-up a Company voluntarily, such Company shall be wound up in the same manner and with the same incidents as if this Act were not passed; and, for the purpose of such winding-up, the Indian Companies Act, 1866, shall be deemed to remain in full force.

Saving of conveyances. 251. Where, previously to the commencement of this Act, any conveyance, mortgage-deed or other instrument has been made in pursuance of the Indian Companies Act, 1866, such instruments shall be of the same force as if this Act had not passed; and, for the purposes of such instrument, the Indian Companies Act, 1866, shall be deemed to remain in full force.

Cognizance of offences. Punishment of offences committed within Presidency-towns. 252. All offences under this Act may be tried by any Magistrate of the first class, unless the period of imprisonment to which the offender is liable exceeds that which such officer is competent to award under the law for the time being in force in the place in which he is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session. If any offence which by this Act is declared to be punishable by any penalty is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held.

Power to make orders as to costs. 253. Subject to the provisions hereinbefore contained, the Court may, in any proceedings under this Act, make such order as to costs as it thinks fit.

Power of High Court to make rules. 254. The High Court may from time to time make rules, consistent with this Act and with the Code of Civil Procedure,

concerning the mode of proceedings to be had for winding-up a Company in such Court and in the Courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the subdivisions of the shares of a Company.

Construction of "Registrar of Joint-Stock Companies" in Act XXI of 1860. 255. In sections 1 and 18 of Act No. XXI of 1860 (*for the registration of Literary, Scientific and Charitable Societies*), the words "Registrar of Joint-Stock Companies" shall be construed to mean Registrar of Joint-Stock Companies under this Act or any Act for the time being in force.

Act not to apply to Bank of Bengal, Madras or Bombay. 256. Save as provided in sections 152 and 153, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay.

First Schedule.

Table A. Regulations for Management of a Company limited by Shares.

Shares.

1. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

2. Every member shall, on payment of eight annas or such less sum as the Company in general meeting may prescribe, be entitled to a certificate under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

3. If such certificate is worn out or lost, it may be renewed on payment of eight annas or such less sum as the Company in general meeting may prescribe.

Calls on Shares.

4. The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

5. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

6. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

7. The directors may, if they think fit, receive, from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and, upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

8. The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

9. Shares in the Company shall be transferred in the following form:

I, *A B*, of _____, in consideration of the sum of rupees _____ paid to me by *C D* of _____, do hereby transfer to the said *C D* the share (or shares) numbered _____ standing in my name in the books of the _____ Company, to hold unto the said *C D*, his executors, administrators and assings, subject to the several conditions on which I held the same at the time of the execution thereof; and I, the said *C D*, do hereby agree to take the said share (or shares) subject to the same conditions. As witness our hands the _____ day of _____

10. The Company may decline to register any transfer of shares made by a member who is indebted to them.

11. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

12. The executors or administrators of a deceased member shall be the only persons recognised by the Company as having any title to his share.

13. Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may, from time to time, be required by the Company.

14. Any person who has become entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

15. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

16. The instrument of transfer shall be presented to the Company, together with such evidence as the directors may require to prove the title of the transferee, and thereupon the Company shall register the transferee as a member.

Forfeiture of Shares.

17. If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call together with interest and any expenses that may have accrued by reason of such non-payment.

18. The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

19. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

20. Any share so forfeited shall be deemed to be the property of the Company and may be disposed of in such manner as the Company in general meeting thinks fit.

21. Any member whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

22. A solemn declaration in writing, made before a Magistrate, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share, and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

23. The directors may, with the sanction of the Company previously given in general meeting, convert any paid up shares into stock.

24. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto as circumstances admit.

25. The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof, respectively, the same privileges and advantages for the purpose of voting at meetings of the Company and for other purposes as would have been conferred by shares of equal amount in the capital of the Company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of the consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

26. The directors may, with the sanction of a special resolution of the Company previously given in general meetings, increase its capital by the issue of new shares; such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the Company in general meeting directs, or, if no direction is given, as the directors think expedient.

27. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.

28. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions, with reference to the payment of

calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

29. The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place as the directors may determine.

30. Subsequent general meetings shall be held, once at the least in every year, at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

31. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

32. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one fifth in number of the members of the Company, convene an extraordinary general meeting.

33. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

34. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meeting.

35. Seven days' notice at the least, specifying the place, the day and the hour of meeting, and, in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

36. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance-sheets and the ordinary report of the directors.

37. No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business. Such quorum shall be ascertained as follows, that is to say: If the persons who have taken shares in the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed twenty.

38. If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place; and if, at such adjourned meeting, a quorum is not present, it shall be adjourned *sine die*.

39. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company.

40. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

41. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

42. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

43. If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Votes of Members.

44. Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

45. If any member is a lunatic or idiot, he may vote by his committee or other legal curator; and, if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

46. If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

47. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has

acquired by transfer, at any meeting held after the expiration of three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

48. Votes may be given either personally or by proxy.

49. The instrument appointing a proxy shall be in writing, under the hand of the appointor, or, if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the Company.

50. The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

51. Any instrument appointing a proxy shall be in the following form:

Company, Limited.

I, _____, of _____, being a member of the _____
Company Limited, and entitled to _____ vote or _____ votes, hereby
appoint _____, of _____, as my proxy, to vote for me and on my be-
half at the [ordinary or extraordinary, as the case may be] general meeting of the Company to
be held on the _____ day of _____, and at any adjournment thereof
(or at any meeting of the Company that may be held in the year _____).
As witness my hand, this _____ day of _____. Signed by the said
_____ in the presence of _____.

Directors.

52. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

53. Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

54. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting.

Powers of Directors.

55. The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the Company as are not by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act and to such regulations, being not inconsistent with the aforesaid regulations, or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

56. The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

57. The office of directors shall be vacated: If he, or any partner of his, or the firm of which he is a member, holds any other office or place of profit under the Company; If he becomes bankrupt or insolvent; If he is punished under any of the penal provisions of the foregoing Act; If he is concerned in or participates in the profits of any contract with the Company.

But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a member of any Company which has entered into contracts with, or done any work for, the Company of which he is director; nevertheless, he shall not vote in respect of such contract or work, and, if he does so vote, his vote shall not be counted.

Rotation of Directors.

58. At the first ordinary meeting after the registration of the Company, the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

59. The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third or other nearest number who have been longest in office shall retire.

60. A retiring director shall be re-eligible.

61. The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

62. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the

vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

63. The Company may from time to time in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

64. Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

65. The Company in general meeting may, by a special resolution, remove any director, before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

66. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

67. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

68. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committees so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

69. A committee may elect a chairman of its meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

70. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and, in case of an equality of votes, the chairman shall have a second or casting vote.

71. All acts done by any meeting of the directors, or of a committee of directors, or by any Person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

72. The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

73. No dividend shall be payable except out of the profits arising from the business of the Company.

74. The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

75. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.

76. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the Company.

77. No dividend shall bear interest as against the Company.

Accounts.

78. The directors shall cause true accounts to be kept: Of the stock in trade of the Company; Of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place; and of the credits and liabilities of the Company.

The books of account shall be kept at the registered office of the Company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Company in general meeting shall be open to the inspection of the members during the hours of business.

79. Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

80. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

81. A balance-sheet shall be made out in every year and laid before the Company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the Company under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

82. A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

83. Once at the least in every year the accounts of the Company shall be examined, and the correctness of the balance sheet ascertained by one or more auditor or auditors.

84. The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the Company in general meeting.

85. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

86. The auditors may be members of the Company, but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company: and no director or other officer of the Company is eligible during his continuance in office.

87. The election of auditors shall be made by the Company at their ordinary meeting each year.

88. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the Company in general meeting.

89. Any auditor shall be re-eligible on his quitting office.

90. If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

91. If no election of auditors is made in manner aforesaid, the Local Government may, on the application of not less than five members of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

92. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

93. Every auditor shall have a list delivered to him of all books kept by the Company, and shall at all reasonable times have access to the books and accounts of the Company. He may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

94. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory. Such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

95. A notice may be served by the Company upon any member either personally or by sending it through post in a letter addressed to such member at his registered place of abode.

96. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

97. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

Table B. Table of Fees to be paid to the Registrar of Joint-Stock Companies by a Company having a capital divided into Shares.

| | Rs. | A. | P. |
|---|-----|----|----|
| For registration of a Company whose nominal capital does not exceed Rs. 20 000, a fee of | 40 | 0 | 0 |
| For registration of a Company whose nominal capital exceeds Rs. 20 000 the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say): | | | |
| For every 10 000 rupees of nominal capital, or part of 10 000 rupees, after the first 20 000 rupees up to 50 000 rupees | 20 | 0 | 0 |
| For every 10 000 rupees of nominal capital, or part of 10 000 rupees, after the first 50 000 rupees up to 100 000 rupees | 5 | 0 | 0 |
| For every 10 000 rupees of nominal capital, or part of 10 000 rupees, after the first 100 000 rupees | 1 | 0 | 0 |
| For registration of any increase of capital made after the first registration of the Company, the same fees per 10 000 rupees, or part of 10 000 rupees, as would have been payable if such increased capital had formed part of the original capital at the time of registration: | | | |
| Provided that no Company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 1 000 rupees, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration. | | | |
| For registration of any existing Company, except such Company as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registration a new Company | | | |
| For registering any document hereby required or authorised to be registered, other than the memorandum of association | 5 | 0 | 0 |
| For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of | 5 | 0 | 0 |

Table C. Table of Fees to be paid to the Registrar of Joint-Stock Companies by a Company not having a capital divided into Shares.

| | Rs. | A. | P. |
|---|-----|----|----|
| For registration of a Company whose number of members, as stated in the articles of association, does not exceed 20 | 40 | 0 | 0 |
| For registration of a Company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 | 100 | 0 | 0 |
| For registration of a Company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100. | | | |
| For registration of a Company in which the number of members is stated in the articles of association to be unlimited, a fee of | 400 | 0 | 0 |
| For registration of any increase on the number of members made after the registration of the Company, in respect of every 50 members or less than 50 members, of such increase | 5 | 0 | 0 |
| Provided that no one Company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the Company. | | | |
| For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company. | | | |
| For registering any document hereby required or authorised to be registered, other than the memorandum of association | 5 | 0 | 0 |
| For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, a fee of | 5 | 0 | 0 |

Table D. Form of Statement referred to in Part III of the Act.

| | | | |
|--|------------------------------------|-----------|--|
| The ¹⁾ Capital of the Company is Rs. | divided into | shares of | |
| each. | | | |
| The number of shares issued is | Calls to the amount of Rs. | per | |
| share have been made, under which the sum of Rs. | has been received. | | |
| The Liabilities of the Company on the first day of January (or July) were: | | | |
| Debts owing to sundry persons by the Company: | | | |
| Under decree, Rs. | | | |
| On mortgages or Bounds, Rs. | | | |

¹⁾ If the Company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

On notes, bills or hundís, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

The assets of the Company on that day were:

Government securities [*stating them*], Rs.

Bills of exchange, hundís and promissory notes, Rs.

Cash at the Bankers, Rs.

Other securities, Rs.

Second Schedule.

(See section 95.)

Form A. Memorandum of Association of a Company limited by Shares.

1. The name of the Company is "The _____ Company, Limited."
2. The registered office of the Company will be situate in _____
3. The objects for which the Company is established are "_____, and the doing all such other things as are incidental or conducive to the attainment of the above objects."
4. The liability of the members is limited.
5. The capital of the Company is Rs. _____, divided into _____ shares of Rs. _____ each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names:

| Names, addresses and descriptions of subscribers. | Number of shares taken by each subscriber. |
|---|--|
| 1. A. B. of | |
| 2. C. D. „ | |
| 3. E. F. „ | |
| 4. G. H. „ | |
| 5. I. J. „ | |
| 6. K. L. „ | |
| 7. M. N. „ | |
| Total shares taken: | |

Dated the _____ day of _____

Witness to the above signatures.

O. P. of _____

Form B. Memorandum and Articles of Association of a Company limited by guarantee, and not having a capital divided into Shares.

Memorandum of Association.

1. The name of the Company is "The Mutual Calcutta Marine Association, Limited."
2. The registered office of the Company will be situate in Calcutta.
3. The objects for which the Company is established are "the mutual insurance of ships belonging to members of the Company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."
4. Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rs. 100.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. A. B. of
2. C. D. „
3. E. F. „
4. G. H. „
5. I. J. „
6. K. L. „
7. M. N. „

Dated the _____ day of _____

Witness to the above signatures.

O. P. of _____

Articles of Association to accompany preceding Memorandum of Association.

1. The Company, for the purpose of registration, is declared to consist of five hundred members.

2. The directors hereinafter mentioned may whenever the business of the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

4. The first general meeting shall be held at such time, not being more than three months after the incorporation of the Company, and at such place, as the directors may determine.

5. Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

9. Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members may themselves convene a meeting.

Proceedings at General Meetings.

10. Seven days' notice at the least, specifying the place, the day and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business. Such quorum shall be ascertained as follows, that is to say: if the members of the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty; with this limitation, that no quorum shall in any case exceed thirty.

13. If, within one hour from the time appointed for the meeting, a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the following week, at the same time and place; and, if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the Company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

16. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot, he may vote by his committee or other legal curator: if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the Company have been paid.

22. Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

23. No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form:

Company, Limited.

I, _____, of _____, being a member of the _____ Company, Limited, hereby appoint _____, of _____, as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary as the case may be] general meeting of the Company to be held on the _____ day of _____ and at any adjournment thereof [or at any meeting of the Company that may be held in the year _____].
As witness my hand, this _____ day of _____.
Signed by the said _____ in the presence of _____

Directors.

25. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

Powers of Directors.

27. The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

28. The directors shall be elected annually by the Company in general meeting.

Business of Company.

(Here insert rules as to mode in which business of insurance is to be conducted.)

Accounts.

29. The accounts of the Company shall be audited by a committee of five members, to be called the audit-committee.

30. The first audit-committee shall be nominated by the directors out of the body of members.

31. Subsequent audit-committees shall be nominated by the members at the ordinary general meeting in each year.

32. The audit-committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

33. The audit-committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company.

They may, at the expense of the Company, employ accountants or other persons to assist them in investigating such accounts, and they may, in relation to such accounts, examine the directors or any other officer of the Company.

34. The audit-committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations and properly drawn up, so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory; and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

35. A notice may be served by the Company upon any member, either personally, or by sending it through the post in a letter addressed to such member at his registered place of abode.

36. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

Winding-up.

37. The Company shall be wound up voluntarily whenever an extraordinary resolution, as defined by the Indian Companies Act, 1882, is passed, requiring the Company to be wound up voluntarily.

Names, Addresses and Descriptions of Subscribers.

| | | |
|----|--------------------|-----------|
| 1. | A. B. of | Merchant. |
| 2. | C. D. „ | „ |
| 3. | E. F. „ | „ |
| 4. | G. H. „ | „ |
| 5. | I. J. „ | „ |
| 6. | K. L. „ | „ |
| 7. | M. N. „ | „ |

Dated the day of 18 .

Witness to the above signatures.

O. P. of .

Form C. Memorandum and Articles of Association of a Company limited by guarantee, and having a capital divided into Shares.

Memorandum of Association.

1. The name of the Company is "The Hotel Company, Limited".
2. The registered office of the Company will be situate in .
3. The objects for which the Company is established are "the facilitating travelling in by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above objects".
4. Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rs. 200.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

| | |
|----|----------|
| 1. | A. B. of |
| 2. | C. D. „ |
| 3. | E. F. „ |
| 4. | G. H. „ |
| 5. | I. J. „ |
| 6. | K. L. „ |
| 7. | M. N. „ |

Dated the day of 18 .

Witness to the above signatures.

O. P. of .

Articles of Association to accompany preceding Memorandum of Association.

1. The capital of the Company shall consist of five lakhs of rupees divided into five thousand shares of one hundred rupees each.
2. The directors may, with the sanction of the Company in general meeting, reduce the amount of shares.
3. The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.
4. All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names:

| Names, addresses and descriptions of subscribers. | Number of shares taken by each subscriber. |
|---|--|
| 1. <i>A. B.</i> of | |
| 2. <i>C. D.</i> „ | |
| 3. <i>E. F.</i> „ | |
| 4. <i>G. H.</i> „ | |
| 5. <i>I. J.</i> „ | |
| 6. <i>K. L.</i> „ | |
| 7. <i>M. N.</i> „ | |
| Total shares taken | |
| Dated the _____ day of _____ | 18 . |
| Witness to the above signatures. | |
| O. P. of _____ | . |

Form D. Memorandum and Articles of Association of an unlimited Company having a capital divided into Shares.

Memorandum of Association.

1. The name of the Company is "The Patent _____ Company".
2. The registered office of the Company will be situate in _____.
3. The objects for which the Company is established are "the working of a patent method of _____, of which method O.P. of _____ is the sole patentee".

We, the several persons whose names are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

| | |
|----------------------------------|------|
| 1. <i>A. B.</i> of | |
| 2. <i>C. D.</i> „ | |
| 3. <i>E. F.</i> „ | |
| 4. <i>G. H.</i> „ | |
| 5. <i>I. J.</i> „ | |
| 6. <i>K. L.</i> „ | |
| 7. <i>M. N.</i> „ | |
| Dated the _____ day of _____ | 18 . |
| Witness to the above signatures. | |
| Q. R. of _____ | . |

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the Company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

Application of Table A.

All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names:

| Names, addresses and descriptions of subscribers. | Number of shares taken by subscribers. |
|---|--|
| 1. <i>A. B.</i> of | |
| 2. <i>C. D.</i> „ | |
| 3. <i>E. F.</i> „ | |
| 4. <i>G. H.</i> „ | |
| 5. <i>I. J.</i> „ | |
| 6. <i>K. L.</i> „ | |
| 7. <i>M. N.</i> „ | |
| Total shares taken | |
| Dated the _____ day of _____ | 18 . |
| Witness to the above signatures. | |
| Q. R. of _____ | . |

Form E. As required by the second part of the foregoing Act.

Summary of capital and shares of the _____ Company, made up to the _____ day of _____.

Nominal capital Rs. _____, divided into shares of Rs. _____ each.

Number of shares taken up to the _____ day of _____.

There has been called up on each shares Rs. _____.

Total amount of calls received, Rs. _____.

Total amount of calls unpaid, Rs. _____.

List of persons holding shares in the _____ Company on the _____ day of _____ and of persons who have held shares therein at any time during the year immediately preceding the said _____ day of _____, showing their names and addresses and an account of the shares so held.

| Folio in register ledger containing particulars. | Names, Addresses and Occupations. | | | | Account of Shares. | | | | Remarks |
|--|-----------------------------------|-----------------|----------|------------------|---|---|-------------------|---|---------|
| | | | | | Shares held by existing members on the day of | Additional shares held by existing members during preceding year. | | Shares held by persons no longer members. | |
| | Surname. | Christian name. | Address. | Occu- pation. | | Number. | Date of transfer. | Number. | |
| | | | | | | | | | |

*Appendix I.**(Table B in Schedule to Act XIX of 1857.¹)***Regulations for Management of the Company.***Shares.*

1. No person shall be deemed to have accepted any share in the Company unless he has testified his acceptance thereof by writing under his hand in such form as the Company from time to time directs.
2. The Company may from time to time make such calls upon the shareholders, in respect of all moneys unpaid on their shares, as they think fit, provided that twenty-one days' notice at least is given of each call; and each shareholder shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the Company.
3. A call shall be deemed to have been made at the time when the resolution authorising such call was passed.
4. If, before or on the day appointed for payment, any shareholder does not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate of 5 per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.
5. The Company may, if they think fit, receive, from any of the shareholders willing to advance the same, all or any part of the moneys due upon their respective shares beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the shareholder paying such sum in advance and the Company agree upon.
6. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.
7. The Company may decline to register any transfer of shares made by a shareholder who is indebted to them.
8. Every shareholder shall, on payment of such sum not exceeding eight annas as the Company may prescribe, be entitled to a certificate, under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.
9. If such certificate is worn out or lost, it may be renewed on payment of such sum, not exceeding eight annas, as the Company may prescribe.
10. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

11. The executors or administrators or representatives of a deceased shareholder shall be the only persons recognized by the Company as having any title to his share.

¹ See s. 2 (c) of the Indian Companies Act, 1882 (VI of 1882), *supra*. The Table is reproduced here as an Appendix to Act VI of 1882 for convenience of reference.

12. Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any shareholder, or in consequence of the marriage of any female shareholder or in any way other than by transfer, may be registered as a shareholder upon such evidence being produced as may from time to time be required by the Company.

13. Any person who has become entitled to a share in any way other than by transfer may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share.

14. The person so becoming entitled shall testify such election by executing to his nominee a transfer of such share.

15. The instrument of transfer shall be presented to the Company accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the Company shall register the transferee as a shareholder.

Forfeiture of Shares.

16. If any shareholder fails to pay any call due on the appointed day, the Company may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with any interest that may have accrued by reason of such non-payment.

17. The notice shall name a further date, and a place or places, being a place or places at which calls of the Company are usually made payable, on and at which such call is to paid: it shall also state that, in the event of non-payment at the time and place appointed, the shares in respect of which such call was made will be liable to be forfeited.

18. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.

19. Any shares so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company thinks fit.

20. Any shareholder whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

Increase in Capital.

21. The Company may, with the sanction of the Company previously given in general meeting, increase its capital.

22. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital.

General Meetings.

23. The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the Company, and at such place as the directors may determine.

24. Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the [first Monday in February]¹⁾ in every year, at such place as may be determined by the directors.

25. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

26. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the Company, convene an extraordinary general meeting.

27. Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

28. Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting; if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

29. Seven days' notice at the least, specifying the place, the time, the hour of meeting, and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner (if any) as may be prescribed by the Company.

30. Any shareholder may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

31. The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the Company.

32. No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business; and such quorum shall be ascertained as follows (that is to say): if the shareholders belonging to the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional share-

¹⁾ The bracketed portion read originally as follows: "day of."

holders after fifty, with this limitation, that it shall not be necessary for any quorum in any case to exceed forty.

33. If within one hour from the time appointed for the meeting the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved: in any other case it shall stand adjourned to the following day at the same time and place; and if at such adjourned meeting the required number of shareholders is not present, it shall be adjourned *sine die*.

34. The chairman (if any) of the Board of Directors shall preside as chairman at every meeting of the Company.

35. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose some one of their number to be chairman of such meeting.

36. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

37. At any general meeting, unless a poll is demanded by at least five shareholders, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

38. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Shareholders.

39. Every shareholder shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.

40. If any shareholder is a lunatic or idiot, he may vote by his committee; and if any shareholder is a minor, he may vote by his guardian, or any one of his guardians if more than one.

41. If more persons than one are jointly entitled to a share or shares, the person whose name stands, first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

42. No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an intestate's estate, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares.

43. Votes may be given either personally or by proxies; a proxy shall be appointed in writing under the hand the appointor, or, if such appointor is a corporation, under their common seal.

44. No person shall be appointed a proxy who is not a shareholder, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of one month from the date of its execution.

Directors.

45. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

46. Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

Powers of Directors.

47. The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not by Act¹⁾ or by the articles of association (if any) declared to be exercisable by the Company in general meeting, subject nevertheless to any regulations of the articles of association being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Disqualification of Directors.

48. The office of director shall be vacated: if he holds any other office or place of profit under the Company; if he becomes bankrupt or insolvent; if he is concerned in or participates in the profits of any contract with the Company; if he participates in the profits of any work done for the Company.

But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a shareholder in any incorporated Company which has entered into contracts with or done any for the Company of which he is director; nevertheless

¹⁾ Should now be read as referring to Act VI of 1882.

he shall not vote in respect of such contract or work; and, if he does so vote, his vote shall not be counted, and he shall incur a penalty not exceeding five hundred rupees.

Rotation of Directors.

49. At the first ordinary meeting after the incorporation of the Company, the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

50. The one-third or other nearest-number to retire during the first and second years ensuing the incorporation of the Company shall, unless the directors agree among themselves, be determined by ballot; in every subsequent year the one third or other nearest number who have been longest in office shall retire.

51. A retiring director shall be re-eligible.

52. The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

53. If at any meeting at which an election of directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at the same time and place; and if at such adjourned meeting no election takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year.

54. The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

55. Any casual vacancy occurring in the Board of Directors may be filled up by the directors; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

Proceedings of Directors.

56. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: questions arising at any meeting shall be decided by a majority of votes: in case of an equality of votes, the chairman, in addition to his original vote, shall have a casting vote: a director may at any time summon a meeting of the directors.

57. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

58. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

59. A committee may elect a chairman of their meetings: if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

60. A committee may meet and adjourn as they think proper: questions at any meeting shall be determined by a majority of votes of the members present; and in case of an equal division of votes, the chairman shall have a casting vote.

61. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

62. The directors shall cause minutes to be made in books provided for the purpose: 1. Of all appointments of officers made by the directors; 2. Of the names of the directors present at each meeting of directors and committees of directors; 3. Of all orders made by the directors and committees of directors; and 4. Of all resolutions and proceedings of meetings of the Company, and of the directors and committees of directors.

And any such minute as aforesaid, if signed by any person purporting to be the chairman of any meeting of directors, or committee of directors, shall be receivable in evidence without any further proof.

63. The Company, in general meeting, may by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead: the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Dividends.

64. The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

65. The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the Company, may select.

66. The directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the Company on account of calls or otherwise.

67. Notice of any dividend that may have been declared shall be given to each shareholder, or sent by post or otherwise to his registered place of abode; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the Company.

68. No dividend shall bear interest as against the Company.

Accounts.

69. Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

70. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters; every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

71. A balance-sheet shall be made out in every year, and laid before the general meeting of the Company; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

72. A printed copy of such balance-sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder.

Audit.

73. The accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors to be elected by the Company in general meeting.

74. If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

75. The auditors need not be shareholders in the Company: no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

76. The election of auditors shall be made by the Company at their ordinary meeting, or, if there are more than one, at their first ordinary meeting in each year.

77. The remuneration of the auditors shall be fixed by the Company at the time of their election.

78. Any auditor shall be re-eligible on his quitting office.

79. If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

80. If no election of auditors is made in manner aforesaid, the Local Government may, on the application of one-fifth in number of the shareholders of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

81. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

82. Every auditor shall have a list delivered to him of all books kept by the Company, and he shall at all reasonable times have access to the books and accounts of the Company; he may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the Company.

83. The auditors shall make a report to the shareholders upon the balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

84. Notices requiring to be served by the Company upon the shareholders may be served either personally, or by leaving the same, or sending them through the post in a letter addressed to the shareholders, at their registered places of abode.

85. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

*Appendix II.***Act No. XII of 1895.***(21st March, 1895.)***An Act to give power to Companies to make certain alterations in the Instruments under which they are constituted, and to amend the Indian Companies Act, 1882.**

Whereas it is expedient to give to companies power to alter the provisions of the instruments under which they are constituted in certain cases; and whereas it is also expedient to amend section 65 of the Indian Companies Act, 1882: It is hereby enacted as follows:

Short title and commencement. 1. This Act may be called the Indian Companies (Memorandum of Association) Act, 1895; and 2. It shall come into force at once.

Sections 3 to 10 to be read with Act VI of 1882. 2.

Interpretation of terms. 3. In this Act, unless there is something repugnant in the subject or context: 1. The expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating a company and not being an Act of Parliament, a Royal Charter or Letters Patent; and 2. The expression "High Court" means for the Town of Rangoon the Recorder and elsewhere the High Court as defined in the General Clauses Act, 1868.

Power for company to alter objects or form of constitution subject to confirmation by High Court. 4. Subject to the provisions of this Act, a company registered under the Indian Companies Act, 1882, may, by special resolution, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, so far as may be required for any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company; but in no case shall any such alteration take effect until confirmed on petition by the High Court.

Particulars as to which Court must be satisfied before confirmation. 5. Before confirming any such alteration the High Court must be satisfied: a) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and every person or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and b) That, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court: Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

Power of Court when confirming to impose terms and make order as to costs. 6. An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court may seem fit, and the Court may make such orders as to costs as it may deem proper.

Discretion conferred on Court. 7. The High Court shall, in exercising its discretion under this Act, have regard to the rights and interests of the members of the Company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it shall think fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always that it shall not be lawful to expend any part of the capital of the company in any such purchase.

Ground on which Court may confirm a proposed alteration. 8. The High Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company: a) To change the place of the registered office of the company from one part of British India to another; or b) To carry on its business more

economically or more efficiently; or c) To attain its main purpose by new or improved means; or d) To enlarge or change the local area of its operations; or e) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or f) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

Registration of order together with memorandum as altered or substituted memorandum and articles, and consequences thereof. 9. 1. Where a company has altered the provisions of its memorandum of association or deed of settlement with respect to the place of its registered office or to the objects of the company, or has altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the Court, a certified copy of the order confirming such alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, or together with a printed copy of the substituted memorandum and articles of association (as the case may be), shall be delivered by the company to the Registrar of Joint-Stock Companies within three months from the date of the order, and the Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with. 2. When any such alteration as aforesaid involves a transfer of the registered office to a part of British India other than that in which the office is at which the company is registered, a certified copy of the order confirming such change shall be delivered by the company to the Registrar of Joint-Stock Companies in each of such parts, and each of such Registrars shall register the same, and shall certify under his hand the registration thereof, and the Registrar for the part from which such office is transferred shall send to the Registrar for the other part all documents relating to the company registered in his office. 3. From the date of such registration (but subject to the provisions of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or, as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were a company registered under Part I of the Indian Companies Act, 1882, with such memorandum and articles of association, and the company's deed of settlement shall cease to apply to the company. 4. For every registration under this section there shall be payable to the Registrar of Joint-Stock Companies a fee of five rupees.

Effect of failure to register within three months. 10. No such alteration as aforesaid shall have any operation until registration thereof has been duly effected under the last foregoing section, and, if such registration shall not have been effected within three months next after the date of the order of the Court confirming the alteration, such alteration and order and all proceedings connected therewith shall at the expiration of such period of three months become and be absolutely null and void: Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

Amendment of section 65 of Act VI of 1882. 11. In section 65 of the Indian Companies Act, 1882, for the words "in such language or languages" the second time they occur the words "in the English language" shall be substituted.

Appendix III.

Act No. IV of 1900.

(16th February, 1900.)

An Act to authorise certain Companies registered under the Indian Companies Act, 1882, to keep branch registers of their members in the United Kingdom.

Whereas it is expedient to authorise certain Companies registered under the Indian Companies Act, 1882, to keep branch registers of their members in the United Kingdom: It is hereby enacted as follows:

Short title, extent and commencement. 1. This Act may be called the Indian Companies (Branch Registers) Act, 1900. 2. It extends to the whole of British India; and 3. It shall come into force at once.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context: a) The expression "Company" means a Company registered under the Indian Companies Act, 1882, having its capital divided into shares; and b) The expression "shares" includes stock.

Power to keep branch registers in the United Kingdom. 3. 1. Any Company may, if authorised so to do by its regulations as originally framed or as altered by special resolution, cause to be kept in the United Kingdom a branch register or registers of members. 2. The Company shall give to the Registrar of Joint-Stock Companies notice of the situation of the office where any such branch register (hereinafter called a "British register") is kept, and any change therein, and of the discontinuance of any such office in the event of the same being discontinued, and the Registrar shall record such notice. 3. A British register shall, as regards the particulars entered therein, be deemed to be a part of the Company's register of members kept under the Indian Companies Act, 1882, and shall be *prima facie* evidence of all particulars entered therein. Every such branch register shall be kept in the manner provided by section 47 of the said Act. 4. The Company shall transmit to its registered office in India a copy of every entry in its British register or registers as soon as may be after such entry is made, and shall cause to be kept at such office, duly entered up from time to time, a duplicate or duplicates of its British register or registers. The provisions of section 55 and section 60 of the Indian Companies Act, 1882, shall apply to every such duplicate, and every such duplicate shall, for the purposes of the said Act, be deemed to be part of the register of members of the Company. 5. Subject to the provisions of this Act with respect to the duplicate register, the shares registered in a British register shall be distinguished from the shares registered in the Indian register, and no transaction with respect to any shares registered in a British register shall, during the continuance of the registration of such shares in such British register, be registered in any other register. 6. The Company may discontinue any British register, and thereupon all entries in that register shall be transferred to some other British register kept by the Company in the United Kingdom or to the register of members kept at the registered office of the Company in India.

Power to make rules and prescribe forms. 4. The Governor General in Council may, by notification in the Gazette of India, make rules and prescribe forms for the purpose of carrying into effect the provisions of this Act.

Construction with Act VI, 1882. 5. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Indian Companies Act, 1882.

The Carriers Act, 1865.

Act No. III of 1865.

(14th February, 1865.)

An Act relating to the rights and liabilities of Common Carriers.

(As modified up to 31st May, 1903.)

Preamble. Whereas it is expedient not only to enable common carriers to limit their liability for loss of or damage to property delivered to them to be carried but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of themselves, their servants or agents: It is enacted as follows:

Short title. 1. This Act may be cited as the Carriers Act, 1865.

Interpretation-clause. "Common carrier". "Person". Number. 2. In this Act, unless there be something repugnant in the subject or context: "Common carrier" denotes a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately; "Person" includes any association or body of persons, whether incorporated or not; Words in the singular number include the plural, and words in the plural include the singular.

Carriers not to be liable for loss of certain goods above one hundred rupees in value, unless delivered as such. 3. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly authorized in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof.

For carrying such property, payment may be required at rates fixed by carrier. **Proviso.** 4. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix: Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in the vernacular language of the country wherein he carries on such business.

The person entitled to recover in respect of property lost or damaged may also recover money paid for its carriage. 5. In case of the loss or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risk as aforesaid.

In respect of what property liability of carrier not limited or affected by public notice. Carriers, with certain exceptions, may limit liability by special contract. 6. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any public notice; but any such carrier, not being the owner of a railroad or tramroad constructed under the provisions of Act XXII of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or Companies, and for regulating the construction and use of works on land so taken*) may, by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

Liability of owner of railroad or tramroad constructed under Act XXII of 1863, not limited by special contract. In what case owner of railroad or tramroad answerable for loss or damage. 7. The liability of the owner of any railroad or tramroad constructed under the provisions of the said Act XXII of 1863, for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any special contract; but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have caused by negligence or a criminal act on his part or on that of his agents or servants.

Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent. 8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the negligence or criminal act of the carrier or any of his agents or servants.

Plaintiffs, in suits for loss, damage, or non-delivery, not required to prove negligence or criminal act. 9. In any suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.

Notice of loss or injury to be given within six months. 10. No suit shall be instituted against a common carrier for the loss of, or injury to, goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.

Schedule.

Gold and silver coin.
 Gold and silver in a manufactured or unmanufactured state.
 Precious stones and pearls.
 Jewellery.
 Time-pieces of any description.
 Trinkets.
 Bills and hundis.
 Currency notes of the Government of India, or notes of any Banks, or securities for payment of money, English or Foreign.
 Stamps and stamped paper.
 Maps, prints, and works of art.
 Writings.
 Title-deeds.
 Gold or silver plate or plated articles.
 Glass.
 China.
 Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.
 Shawls and lace.
 Cloths and tissues embroidered with the precious metals or of which such metals form part.
 Articles of ivory, ebony or sandal wood.

The Negotiable Instruments Act, 1881.**Act No. XXVI of 1881.¹⁾***(9th December, 1881.)***An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.***(As modified up to 1st August, 1897.)*

Preamble. Whereas it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques: It is hereby enacted as follows:

Chapter I. Preliminary.

Short title. Local extent. Saving of usages relating to hundis etc. Commencement. 1. This Act may be called the Negotiable Instruments Act, 1881: It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1882, section 25 or affects any local usage relating to any instrument in an oriental language:²⁾ Provided that such usages may be excluded

¹⁾ This Act has been declared in force in the Town of Mandalay—See the Upper Burma Laws Act, 1886 (XX of 1886), s. 6, and second schedule, Second Part. It has also been extended under the Scheduled Districts Act, 1874, (XIV of 1874), to the whole of Upper Burma, see Burma Gazette, 1893, Pt. I, p. 154.

For summary procedure on Negotiable Instruments, see the Code of Civil Procedure, 1908, Schedule I, Order XXXVII. For special provisions regarding Negotiable Instruments, see the Code of Civil Procedure, 1908, Schedule I, Order I Rule 6; Order VII Rule 16; Order XXI Rules 51, 76 and 80.

²⁾ The words "any local usage relating to any instrument in an oriental language" exempts from the operation of the act the Native Custom of issuing Hundis. The Select Committee to which the Negotiable Instruments Bill was referred before it became law reported as follows:—"We have carefully considered the arguments urged on the one side by the learned Chief Justice of Bengal and the Bank of Bengal for the immediate application of the measure in its entirety to hundis, and on the other side by the Government of the Punjab for the total exclusion of hundis from any part of the measure. We have come to the conclusion that the Bill in this respect should be left substantially as it stands. Admitting with the Chief Justice that one main principle of Indian codification is to reconcile and assimilate, as far as possible, the Native and European law on the subject, we would point out that this principle must be applied so as to produce as little friction as possible, and we feel assured that any sudden abolition of the numerous local usages (there is no general custom) as to hundis, uncertain and undefined as they often are, would cause much and justifiable dissatisfaction among Native bankers and merchants in certain parts of the country. But we believe that the effect of the Bill, if passed

by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

2. [*Repeal of enactments.*] *Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*

with a saving of the local usage in question, will be, not as the Chief Justice fears, to stereotype and perpetuate these usages, but to induce the Native mercantile community gradually to discard them for the corresponding rules contained in this Bill. The desirable uniformity of mercantile usage will thus be brought about without any risk of causing hardship to Native bankers and merchants. How long this change will take, it is of course impossible to prophesy. But the Bank of Bengal has supplied evidence that the Native usages as to negotiable paper have of recent years been greatly changing and that the tendency is to assimilate them more and more to the European custom." (See Gazette of India, 1st March 1879.) The various kinds of Hundis in vogue are: 1. Shah Jog or Dhani Jog Hundi; 2. Jokhmi Hundi; and 3. Zickri Chit or Marwari Hundi.

Shah Jog Hundi.

Form.

By the blessing of it is written to the following effect: To-day drawn a hundi payable at sight on you for Rs. 1500, double Rs. 750 credited in the Lahore Khatta payable to P. B. D. M. *On receipt of this hundi through a dhani paying money as written above, have this hundi duly receipted on the back, (or pay this money at sight Shah Jog after making due inquiries as usual in hundi transactions.)* Signed A. B. (drawer). Total fifteen hundred Rupees only.

On Back.

P. K. S. endorsed in favour of H. P. C. of Calcutta. Addressed to respectable C. D. of Calcutta address Accepted (Date) by C. D. of Calcutta by the pen of (*gomasta, i. e. accountant*). Signed H. P. C. through (*gomasta*).

In *Davlatram v. Balakidas* 6. Bom. H. C. R. 24 at page 26 Sir Joseph Arnould observed: "The general process is this: The Shah or person who has brought or holds the hundi, and whose name must always be indorsed on it before it is presented, sends one of his men to the shop of the drawee, whose killidar (treasurer), after referring to the particulars of advices relating to the hundi, which have in due course been previously entered in the Chitti Nond or bill-book and finding it correspondent therewith, thereupon enters in its journal the particulars of the hundi, viz its amount, date, due date, name of shah, or person tendering for acceptance, and whose name, as already intimated, is always indorsed on the hundi. He then returns the hundi to the servant of the shah who takes it back to the shah's shop. If the day of presentment be the exact due date, the amount is paid on that very day; if the hundi is overdue when presented, it is generally paid the next day, the reason assigned being that, unless presented on the actual due date—when of course its presentation is expected and provided for—the munim (cashier) or principal of the firm may not be present, or there may not be sufficient cash in the hands of the killidar to meet the amount. Payment is made by sending the amount by a servant of the drawee to the shop of the shah. On receiving the amount the killidar of the shah writes an acknowledgment in full on the back of the hundi, and sends it back to the shop of the drawee by the servant who has brought it thence."

The points of difference between hundis and bills of exchange were likewise adverted to in the same judgment. Sir Joseph Arnould said that "hundis made payable to shah, shah jogi, differ from bills of exchange in one very material circumstance, amongst others, that, as a general rule the acceptance of the drawee is not written across them, so as thereby to give them an additional degree of mercantile credit, and to that extent make it just to impose an additional degree of liability on the acceptor; but as a rule, the particulars are only entered in the drawee's books. It may be added also, as a general rule, that hundis are very frequently not presented for acceptance before they are presented for payment, before, that is, they are either due or overdue. It is also stated that the name of the shah or person who has brought or holds the hundi, must always be endorsed on it before it is presented." Again at p. 27 he says: "It will be convenient to advert to those points in which both parties substantially agree. And first as to the very important point of the meaning attached in the Hindu mercantile world to the formula 'payable to shah'. Now the result of the evidence on both sides as to this point, supported by the learned etymological evidence of Mr Balaji Pandarang, is clearly this, that shah means a responsible and respectable person, a man of worth and substance known in the bazaar. A hundi payable to the shah is paid on the responsibility of the shah. If he be not known to the drawee, inquiry is to be made about him, and the amount of the hundi is not paid till that inquiry is satisfactorily answered; or till some one known to the drawee is found to identify him or speak to his responsibility."

Dhani Jog.

This is practically the same as Shah Jog, but it is payable to the "purchaser", i. e. Dhani as distinguished from Shah Jog, a respectable man. In the case of *Jetta Parkla v. Ramchandra Vithoba*, J. L. R. 16, Bom. 680 an account, reciting that the sum borrowed with interest was payable whenever Dhani may demand was held not to be a negotiable instrument payable

Interpretation-clause. 3. In this Act: "Banker" includes also persons or a corporation or company acting as bankers; and "notary public" includes also any person appointed by the Governor General in Council to perform the functions of a notary public under this Act.

on demand to the bearer since the word Dhani was not in the commercial language of the Presidency equivalent to "bearer" in the sense in which that word was employed in the Paper Currency and Negotiable Instruments Act, such a document not being negotiable within the meaning of s. 13. Dhani jog hundis, however, are extensively used and are similar in character to Shah jog hundis.

Jokhmi Hundi.

Form.

"There is welfare. To the feet of the worshipful Bhai of fivefold dignity, Lidathar Govindji at theseaport town of Bombay a great and good place. From Navanagar, written by Bhai Lilladhar Govindji, whose prostrations do you be good enough to read. To wit: (we) have received here from Thakore Jadowji Gopalji Rs. 4000, in words forty hundred, in full, which are received. In respect thereof this jokhmi hundi (i. e. conditional hundi) is drawn against goods on board the "Gunga Hariprasad", Nakhwa Bhoja, owner, Th. Dayalji Morarji (being) 29 (twenty-nine) bags of sheep's wool, shipped from the seaport town of Tuna, against which (this) jokhmi hundi (is drawn) after the said vessel shall have arrived in a safe, sound, and secure manner. After the time of 4 four (i. e. 8) days (thereafter) do you be good enough to pay (the money) to (one) named Shah (i. e. a respectable person being a holder thereof) looking to (his) means, station and place. The token is that we shall write (about it) in the letter of advice. The 14th of Magsur Vad of Samvat 1935 (22. Dec. 1878). The handwriting of Damodar the son of the living Inderji, whose prostrations do you be good enough to read."

On Back.

"Do you be good enough to pay the double of the half of Rs. 2000, twenty hundred, in all Rs. 4000, forty hundred; do you be good enough to pay according to usage of jokhmi hundi." Rs. 4000.

"In form a jokhmi hundi does not materially differ from that of the ordinary hundi except in one particular clause, which constitutes its characteristic difference." (Per Sargent J. in *Jadhowji Gopal v. Jetha Shahumji and C. A. Turner*, J. L. R. 4 Bom. 333 at p. 340.)

A jokhmi hundi, which is in use in the Bombay trade is a hundi "conditional on the safe arrival of a vessel, the object of its execution being to put the drawer in funds, and at the same time to effect an insurance upon the goods themselves by reversing the position of the insurer and the insured from that which obtains in ordinary policies, the insurer being the buyer of the hundi who pays the insurance money down, and is entitled to recover it with a premium (together making the amount of the hundi) in case the vessel arrives safely. The price paid for the Jokhmi hundi depends upon the rate of exchange, the vessel in which the goods are shipped, the season and the nature of the goods." (Ibid.) "A Jokhmi hundi would thus appear to have been designed with a double purpose; viz to put the drawer of the hundi in funds, and at the same time to effect an insurance upon the goods themselves by reversing the position of the insurer and insured from that which obtains in ordinary policies, the insurer being the buyer of the hundi who pays the insurance money down, and is entitled to recover it with a premium (together making the amount of the hundi) in case the vessel arrives safely." — (Ibid.)

Zickri Chit.

Form.

Divested of all flowery language it runs as follows: "From the drawer or endorser to B in Calcutta one hundi for Rs. 2500 on D drawn from Cawnpore by E, dated so and so, favouring so and so, currency so and so, the hundi of this tenor and date we have sold to so and so, they say the hundi is not accepted. If the drawer do not accept the hundi you accept it on our account and pay the sum on due date by taking proper securities. Sd. A. B.

The Zickri Chit is in use all over India in connection with Marwari hundis. It is furnished to the holder by some prior party to the hundi on the hundi being refused acceptance, or when a refusal is likely to occur. It is addressed to some person residing in the town, where the hundi is payable, and if the reference is considered unsatisfactory, the Bank or the holder for the time being can claim a fresh Chit or demand immediate payment. It is, however, generally found that the person addressed in the Chit accepts the hundi and pays it at maturity. The acceptance is given in writing on the Zickri Chit.

"There appears to be some doubt as to whether the shroff usage as to Zickri Chits or letters of protection offends against the procedure prescribed in sections 108 and 109 of the Negotiable Instruments Act. My opinion is that this local usage is saved by the provisions of section 1 which expressly exempts local usage relating to any instrument in the oriental language. But some of the Banks, apparently, apply to these chits the procedure prescribed by sections 108 and 109, and the point, has not so far as I am aware, arisen for decision in Court." (Chalmers & Gaspersz', *Negotiable Instruments Act*, p. 172.) "But the practice with reference to these Chits is not uniformly the same. Two Calcutta Exchange Banks note for non-acceptance all hundis refused

Chapter II. Of Notes, Bills and Cheques.

"Promissory note". 4. A "promissory note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms:

- a) "I promise to pay B or order Rs. 500."
- b) "I acknowledge myself to be indebted to B in Rs. 1000, to be paid on demand, for value received."
- c) "Mr. B, I O U Rs. 1000."
- d) "I promise to pay B Rs. 500 and all other sums which shall be due to him."
- e) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."
- f) "I promise to pay B Rs. 500 seven days after my marriage with C."
- g) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."
- h) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked a) and b) are promissory notes. The instruments respectively marked c), d), e), f), g) and h) are not promissory notes.

"Bill of exchange". 5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. A promise or order to pay is not "conditional", within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain. The sum payable may "certain", within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due. The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and section 4, although he is mis-named or designated by description only.

acceptance, and the Bank of Bombay follows the same course unless the hundis are actually accompanied by a Zickri Chit, when the last-mentioned Bank takes acceptance on the chit itself and not on the hundi. On the other hand, the Bank of Bengal does not note or protest for non-acceptance, but takes an acceptance on the Zickri Chit and not on the hundi." (Ibid.) "The question is mainly one of commercial convenience. Noting and protest are foreign to Native usages and unless this usage is exempted by s. 1 from the provisions of sections 108 and 109 it might be advisable to amend sections 7 and 33 so as to make the party addressed in a Zickri Chit a drawee in case of need, and thus dispense with noting for non-acceptance. An alternative course would be to amend sections 108 and 109 so as to recognise letters of protection."

"In 1882 the Bombay Chamber of Commerce recommended that the formalities prescribed by sections 108, 109 and 113 regarding Noting and Protesting should be done away with altogether as the formalities conferred no benefit or security to any one, and imposed obligations, it was often difficult, if not impossible, to carry out without inconvenience. The shroff usage of Zickri Chit offers a preferable course." (Ibid.)

Form of Hundi accompanied by a Zickri Chit.

To A of Bombay from B of Calcutta, we drawing a hundi for Rs. 2500, *twice Rs. 1250, twelve hundred and fifty*, favouring C, dated so and so, pay through respectable firm on due date in current money.

This date, month and year.

Signed A. B. (by Gomasta).

Indorsement.

Signed A. B. (drawer).

Signed P. B. D. (payer).

Hundi sent for realization by A. T. of Lahore to N. M. C. of Bombay.

Signed A. T. (Indorsee).

Zickri Chit.

N. M. C. endorsed to P. K. S. in case the said drawee does not accept the hundi, have it accepted by brother A. R. K. of Calcutta.

Signed N. M. C. (Indorsee).

"Cheque". 6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

"Drawer". "Drawee". "Drawee in case of need". "Acceptor". "Acceptor for honour". "Payee". 7. The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called "the drawee". When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need". After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor". When a bill of exchange has been noted or protested for non-acceptance or for better security and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour". The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

"Holder". 8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

"Holder in due course". 9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to, or to the order of, a payee, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

"Payment in due course". 10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Inland instrument. 11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India, shall be deemed to be an inland instrument.

Foreign instrument. 12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

"Negotiable instrument". 13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person, or to the order of a specified person, or to the bearer thereof.

Negotiation. 14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Indorsement. 15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser"¹.

Indorsement "in blank" and "in full". "Indorsee". 16. If the indorser signs his name only, the indorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

Ambiguous instruments. 17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Where amount is stated differently in figures and words. 18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

¹ For an exception to s. 15 in the case of Government Securities, see the Indian Securities Act, 1886 (XIII of 1886), s. 6.

Instruments payable on demand. 19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Inchoate stamped instruments. 20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *primâ facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

"At sight". "On Presentment". "After sight." 21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"Maturity." Days of grace. 22. The maturity of a promissory note or bill of exchange is the date at which it falls due. Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Calculating maturity of bill or note payable so many months after date or sight. 23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

a) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

b) A negotiable instrument, dated 30th August, 1878 is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

c) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

Calculating maturity of bill or note payable so many days after date or sight. 24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

When day of maturity is a holiday. 25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day. *Explanation.* The expression "public holiday" includes Sundays, New Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government, by notification in the Official Gazette, to be a public holiday.

Chapter III. Parties to Notes, Bills and Cheques.

Capacity to make, &c., promissory notes, &c. Minor. 26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself. Nothing herein contained shall be deemed to empower a corporation

to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Agency. 27. Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name. A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal. An authority to draw bills of exchange does not of itself import an authority to indorse.

Liability of agent signing. 28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of legal representative signing. 29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of drawer. 30. The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawee of cheque. 31. The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of maker of note and acceptor of bill. 32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of the bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand. In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

Only drawee can be acceptor except in need or for honour. 33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Acceptance by several drawees not partners. 34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Liability of indorser. 35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided. Every indorser after dishonour is liable as upon an instrument payable on demand.

Liability of prior parties to holder in due course. 36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Maker, drawer and acceptor principals. 37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Prior party a principal in respect of each subsequent party. 38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Suretyship. 39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Discharge of indorser's liability. 40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:

First indorsement, "B."

Second indorsement, "Peter Williams."

Third indorsement, "Wright & Co."

Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

Acceptor bound although indorsement forged. 41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptance of bill drawn in fictitious name. 42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Negotiable instrument made, &c., without consideration. 43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto. *Exception I.* No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation. *Exception II.* No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Partial absence or failure of money-consideration. 44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced. *Explanation.* The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

Partial failure of consideration not consisting of money. 45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Holder's right to duplicate of lost bill. 45 A. Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again. If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

Chapter IV. Of Negotiation.

Delivery. 46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive. As between parties standing in immediate relation delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf. As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein. A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof. A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Negotiation by delivery. 47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof. *Exception.* A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Negotiation by indorsement. 48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Conversion of indorsement in blank into indorsement in full. 49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Effect of indorsement. 50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:

a) "Pay the contents to C only."

b) "Pay C for my use."

c) "Pay C or order for the account of B."

d) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

e) "Pay C."

f) "Pay C value in account with the Oriental Bank."

g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

Who may negotiate. 51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same. *Explanation.* Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Indorser who excludes his own liability or makes it conditional. 52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen. Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

a) The indorser of a negotiable instrument signs his name, adding the words: "Without recourse."

Upon this indorsement he incurs no liability.

b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights, of an indorsee against B and C.

Holder deriving title from holder in due course. 53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Instrument indorsed in blank. 54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Conversion of indorsement in blank into indorsement in full. 55. If a negotiable instrument, after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Indorsement for part of sum due. 56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased. 57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Instrument obtained by unlawful means or for unlawful consideration. 58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party, prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument acquired after dishonour or when overdue. 59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor: Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

Instrument negotiable till payment or satisfaction. 60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Chapter V. Of Presentment.

Presentment for acceptance. 61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured. If the bill is directed to the drawee at a particular place, it must be presented at that place; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured. Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Presentment of promissory note for sight. 62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Drawee's time for deliberation. 63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Presentment for payment. 64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient. *Exception.* Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for presentment. 65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment for payment of instrument payable after date or sight. 66. A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of promissory note payable by instalments. 67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment of such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of instrument payable at specified place and not elsewhere. 68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Instrument payable at specified place. 69. A promissory note or bill of exchange, made, drawn, or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Presentment where no exclusive place specified. 70. A promissory note or bill of exchange not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment when maker, &c., has no known place of business or residence.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment of cheque to charge drawer. 72. Subject to the provisions of section 84, a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge any other person. 73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of instrument payable on demand. 74. Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment by or to agent representative of deceased or assignee of insolvent.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared insolvent, to his assignee.

When presentment unnecessary. 76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases: a) If the maker, drawee or acceptor intentionally prevents the presentment of the instrument; or, If the instrument being payable at his place of business, he closes such place on a business day during the usual business hours; or, If the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours; or, If the instrument not being payable at any specified place, he cannot after due search be found; b) As against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment; c) As against any party if, after maturity, with knowledge that the instrument has not been presented: He makes a part payment on account of the amount due on the instrument; Or promises to pay the amount due thereon in whole or in part; otherwise waives his right to take advantage of any default in presentment for payment; d) As against the drawer, if the drawer could not suffer damage from the want of such presentment.

Liability of banker for negligently dealing with bill presented for payment.

77. When a bill of exchange accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Chapter VI. Of Payment and Interest.

To whom payment should be made. 78. Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Interest when rate specified. 79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified. 80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation. When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment or indemnity in case of loss. 81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced to be indemnified against any further claim thereon against him.

Chapter VII. Of Discharge from Liability on Notes, Bills and Cheques.

Discharge from liability: by cancellation; by release; by payment. 82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon: a) To a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder; b) To a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge; c) To all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Discharge by allowing drawee more than twenty-four hours to accept. 83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

When cheque not duly presented and drawer damaged thereby. 84. 1. Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid¹). 2. In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case. 3. The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Illustrations.

a) A draws a cheque for Rs. 1000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

b) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

Cheque payable to order. 85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Parties not consenting discharged by qualified or limited acceptance. 86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation. An acceptance is qualified: a) Where it is conditional, declaring the payment to be dependent on the happening of an event therein stated; b) Where it undertakes the payment of part only of the sum ordered to be paid; c) Where, no place of payment being specified on the order, it undertakes the payment at

¹) This Section was substituted for the original S. 84 by the Negotiable Instruments Act Amendment Act, 1897 (VI of 1897), s. 3. — The wording of the original section was as follows — "When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder."

a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere; d) Where it undertakes the payment at a time other than that at which under the order it would be legally due.

Effect of material alteration. Alteration by indorsee. 87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties; and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof. The provisions of this section are subject to those of sections 20, 49, 89 and 125.

Acceptor or indorser bound notwithstanding previous alteration. 88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent. 89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered; or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated; payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands. 90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Chapter VIII. Of Notice of Dishonour.

Dishonour by non-acceptance. 91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted. Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

Dishonour by non-payment. 92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given. 93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon. Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given. 94. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended. If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transmit notice of dishonour. 95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

Agent for presentment. 96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his prin-

principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead. 97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary. 98. No notice of dishonour is necessary: a) When it is dispensed with by the party entitled thereto; b) In order to charge the drawer when he has countermanded payment; c) When the party charged could not suffer damage for want of notice; d) When the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it; e) To charge the drawers when the acceptor is also a drawer; f) In the case of a promissory note which is not negotiable; g) When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

Chapter IX. Of Noting and Protest.

Noting. 99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each. Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reasons, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest. Protest for better security. 100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest. When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest. 101. A protest under section 100 must contain: a) Either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon; b) The name of the person for whom and against whom the instrument has been protested; c) A statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found; d) When the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal; e) The subscription of the notary public making the protest; f) In the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected. A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.

Notice of protest. 102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance. 103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

Protest of foreign bills. 104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

When noting equivalent to protest. 104 A. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest

before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

Chapter X. Of Reasonable Time.

Reasonable time. 105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

Reasonable time of giving notice of dishonour. 106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour. If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice. 107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

Chapter XI. Of Acceptance and Payment for Honour and Reference in Case of Need.

Acceptance for honour. 108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

How acceptance for honour must be made. 109. A person desiring to accept for honour must, by writing on the bill under his hand declare that he accepts under protest the protested bill for the honour of the drawer of a particular indorser whom he names, or generally for honour.

Acceptance not specifying for whose honour it is made. 110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour. 111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance. But an acceptor for honour is not liable to the holder of the bill unless it is presented (or in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged. 112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour. 113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying or his agent in that behalf has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of payer for honour. 114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Drawee in case of need. 115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance and payment without protest. 116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

Chapter XII. Of Compensation.

Rules as to compensation. 117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee shall (except in cases provided for by the Code of Civil Procedure, section 532)¹ be determined by the following rules: a) The holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it; b) When the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places; c) An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment; d) When the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places; e) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

Chapter XIII. Special Rules of Evidence.

Presumptions as to negotiable instruments: of consideration; as to date; as to time of acceptance; as to time of transfer; as to order of indorsement; as to stamp; that holder is a holder in due course. 118. Until the contrary is proved, the following presumptions shall be made: a) That every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration; b) That every negotiable instrument bearing a date was made or drawn on such date; c) That every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity; d) That every transfer of a negotiable instrument was made before its maturity; e) That the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon; f) That a lost promissory note, bill of exchange or cheque was duly stamped; g) That the holder of a negotiable instrument is a holder in due course: Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration the burthen of proving that the holder is a holder in due course lies upon him.

Presumption on proof of protest. 119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Estoppel against denying original validity of instrument. 120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying capacity of payee to indorse. 121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying signature or capacity of prior party. 122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

¹ The reference should now be read as referring to Act V of 1908, the New Civil Procedure Code.

Chapter XIV. Of crossed Cheques.

Cheque crossed generally. 123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed specially. 124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue. 125. Where a cheque is uncrossed, the holder may cross it generally or specially. Where a cheque is crossed generally, the holder may cross it specially. Where a cheque is crossed generally or specially, the holder may add the words "not negotiable." Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of cheque crossed generally. **Payment of cheque crossed specially.** 126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker. Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially more than once. 127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in due course of crossed cheque. 128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment of crossed cheque out of due course. 129. Any banker paying a cheque crossed generally other wise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Cheque bearing "not negotiable". 130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable", shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Non-liability of banker receiving payment of cheque. 131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

Chapter XV. Of Bills in Sets.

Set of bills. 132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished. *Exception.* When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

Holder of first acquired part entitled to all. 133. As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Chapter XVI. Of International Law.

Law governing liability of maker, acceptor or indorser of foreign instrument. 134. In the absence of a contract to the contrary, the liability of the maker or

drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

Law of place of payment governs dishonour. 135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

Instrument made, etc., out of British India, but in accordance with its law. 136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Presumption as to foreign law. 137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

Chapter XVII. Notaries Public.

Power to appoint notaries public. 138. The Governor General in Council may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may by like notification, remove from office any notary public appointed under this Act.

Power to make rules for notaries public. 139. The Governor General in Council may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries¹.

Schedule.

[Enactments repealed.] *Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*

Act No. V of 1866.

Passed by the Governor-General of India in Council.

An Act to provide a summary procedure on Bills of Exchange and to amend in certain respects the Commercial Law of British India.

(Received the assent of the Governor-General on the 23rd February, 1866.)

Preamble. Whereas it is expedient to provide a summary procedure for the recovery of money due on dishonoured Bills of Exchange, Hundis and Promissory Notes; and whereas inconvenience is felt by persons engaged in trade by reason

¹ For rules under this section see Notification No. 1433, dated 30th September, 1886, *Gazette of India*, 1886, Pt. I, p. 548. On the extension of the Act to Upper Burma, similar rules were framed with respect to this Province—see Notification No. 489, dated 11th May, 1894, *Burma Gazette*, Pt. II, p. 109, printed *Burma Rules Manual*, Ed. 1897, p. 81.

of the laws of British India being in some particulars different from those of England in matters of common occurrence in the course of such trade; and whereas, with a view to remedy such inconvenience, it is expedient to amend the laws of British India as hereinafter is mentioned; It is enacted as follows:

Interpretation Clause. "British India." "High Court." "Local Government." 1. In this Act, unless there be something repugnant in the subject or context, "British India" shall mean the territories which are or may become vested in Her Majesty or Her successors by the Statute 21 & 22 Vic., cap. 106 (*An Act for the better Government of India*); "High Court" shall mean the High Court of Judicature at Calcutta, Madras or Bombay, as the case may be; And in every part of British India in which this Act shall operate, "Local Government" shall mean the person authorized by law to administer executive government in such part.

From and after 1st May 1866, in all suits upon Bills of Exchange, &c., if plaintiff desires to proceed under this Act, the summons shall be in the form given in the Schedule. 2. From and after the first day of May 1866, all suits upon Bills of Exchange, Hundis or Promissory Notes commenced in any High Court within six calendar months after the same shall have become due and payable, may, in case the plaintiff shall desire to proceed under this Act, be commenced as hereinafter is mentioned, (that is to say) the plaint shall be in the form prescribed by the Code of Civil Procedure; but the summons shall be in the form contained in the Schedule to this Act; and in any case in which the plaint and summons shall be in such forms respectively, it shall not be lawful for the defendant to appear to or defend the suit unless he shall obtain leave from a Judge as hereinafter mentioned so to appear and defend; and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claim more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

Defendant showing a defence upon the merits to have leave to appear. 3. The High Court shall, upon application within the period of seven days from the service of such summons, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons or upon affidavits satisfactory to the Court, which disclose a defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as to the Court may seem fit.

Court may, under special circumstances, set aside decree. 4. After decree, the High Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it shall seem reasonable to the Court so to do and on such terms as to the Court may seem just.

Court may order Bill to be deposited with Officer of Court in certain cases. 5. In any proceedings under this Act, it shall be competent to the High Court to order the Bill or Note sought to be proceeded upon to be forthwith deposited with an Officer of the Court, and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.

Remedy for recovery of cost of noting non-acceptance of dishonoured Bill. 6. The holder of every dishonoured Bill of Exchange or Promissory Note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Act for the recovery of the amount of such Bill or Note.

Civil Procedure Code and rules made thereunder to apply to proceedings under this Act. 7. The provisions of the Code of Civil Procedure, and all rules made under or by virtue of the said Code shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under this Act.

Local Government may extend Act. 8. It shall be lawful for the Local Government to direct that all or any part of the provisions in Sections 2 to 7, both in-

clusive, of this Act shall, *mutatis mutandis*, apply to all or any Courts or Court in the territories under such Government, other than a High Court, and within one month after such order shall have been made and published in the Official Gazette, such provisions shall extend and apply in manner directed by such order, and any such order may be in like manner from time to time altered and annulled. In and by any such order the Local Government may direct by whom any powers or duties incident to the provisions applied under this Act, shall and may be exercised with respect to matters in such other Courts or Court, and may make any orders or regulations which may be deemed requisite for carrying into operation in such Courts or Court the provisions so applied.

Consideration for guarantee need not appear by writing. 9. [Repealed by Act 9 of 1872].

Guarantee to or for a Firm to cease upon a change in the Firm, except in special cases. 10. [Repealed by Act 9 of 1872].

Acceptance of a Bill, Inland or Foreign, to be in writing on it, and signed. 11. No acceptance of any Bill of Exchange, whether Inland or Foreign, made after the first day of May 1866, shall be sufficient to bind or charge any person, unless the same be in writing on such Bill, or, if there be more than one part of such Bill, on one of the said parts, and signed by the acceptor or some person duly authorized by him.

What are to be deemed "Inland Bills." 12. Every Bill of Exchange or Promissory Note drawn or made in any part of British India, and made payable in or drawn upon any person resident in any part of British India, shall be deemed to be an Inland Bill; but nothing herein contained shall alter or affect the stamp duty, if any, which, but for this enactment, would be payable in respect of any such Bill or Note.

Protest by Notary Public to be *prima facie* evidence of dishonour. 13. Protest of a Bill of Exchange, whether Inland or Foreign, when purporting to be made by a Notary Public, shall be *prima facie* evidence that the Bill has been dishonoured.

Suits on lost negotiable instruments. 14. In case of any suit founded upon a Bill of Exchange or other negotiable instrument, if it shall be proved to the satisfaction of the Court that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, it shall be lawful for the Court to make such decree as it would have made it the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Rights under marine and fire policies to vest in assignees. 15. Every assignee, by endorsement or otherwise, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred to and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

Schedule.

No. of Suit.

In the High Court of

at

Plaintiff
Defendant

To [here enter the defendant's name, description and address].

Whereas [here enter the plaintiff's name, description and address] has instituted a suit in this Court against you under Act No. V of 1866 (to provide a summary procedure on Bills of Exchange and to amend in certain respects the Commercial Law of British India) for Rs. principal and interest [or Rs. balance of principal and interest] due to him as the Payee [or Indorsee] of a Bill of Exchange [or Hundi or Promissory Note] of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within seven days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such seven days to obtain a decree for any sum not exceeding the sum of Rs. [here state the sum claimed] and the sum of Rs. for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[Here copy the Bill of Exchange, Hundi or Promissory Note, and all endorsements upon it.]

Special Procedure for Suits on Negotiable Instruments under the Code of Civil Procedure 1908 (Act V of 1908) Orders XXXVII of First Schedule.

Or XXXVII. Summary Procedure on Negotiable Instruments.

Application of Order. 1. This Order shall apply only to: a) The High Courts of Judicature at Fort William, Madras and Bombay; b) The Chief Court of Lower Burma; c) The Court of the Judicial Commissioner of Sind; and d) Any other Court to which sections 532 to 537 of the Code of Civil Procedure, 1882, have been already applied.

Institution of summary suits upon bills of exchange, etc. 2. 1. All suits upon bills of exchange, hundis or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4 in Appendix B or in such other form as may be from time to time prescribed. 2. In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith.

Defendant showing defence on merits to have leave to appear. 3. 1. The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application. 2. Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

Power to set aside decree. 4. After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to order bill, &c., to be deposited with officer of Court. 5. In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of cost of noting non-acceptance of dishonoured bill or note. 6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

Procedure in suits. 7. Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

Act No. X of 1841.*(5th July, 1841.)*

An Act for prescribing the Rules to be observed in order that ships or vessels belonging to ports within the territories under the Government of the East India Company, or belonging to Native Princes or States or their subjects, may become entitled to the privileges of British ships under a proclamation of the Governor General of India in Council made in pursuance of the Statute 3rd and 4th Victoria, Ch. 56.

(As modified up to the 1st December, 1893.)

1. Ships to be registered. Certificate of registry.
2. Ports of registry.
3. Registrars.
4. Book of registry.
5. Declaration.
6. Further declaration by owners who attend.
7. Measurement to be made.
8. Certificate of surveying officer.
9. Measurement of tonnage for purpose of registry.
10. Measurement of tonnage for purpose other than registry.
11. Substitution of Governor General in Council for Board of Trade.
12. Marking of register tonnage on ship or vessel.
13. [Repealed].
14. Registered tonnage to be repealed in every subsequent register.
15. Fraudulent use of certificate.
16. Change of master.
17. Name of ship.
18. Certificate of building.
19. Certificate lost or mislaid.
20. Detention of certificate.
21. Registration de novo.
22. Testimony of Registering-officers.
23. False declaration. Falsifying documents.
24. Ships of Native States.
25. Fees.
26. Ports to which ships belong.
27. Definition of "Local Government".

Act No. XI of 1850.*(15th March, 1850.)***An Act to amend Act X of 1841.***(As modified up to the 1st December, 1893.)*

1. Preamble.
2. Passes under Act X of 1841 to ships of allied Native States wherever built.
3. Registry of, and passes to, certain coasting vessels.
4. Fees for certificates of registry of such vessels.
5. Construction.

The Indian Merchant Shipping Act, 1859.*(1 of 1859.)***An Act for the Amendment of the law relating to Merchant Seamen (25th January 1859).***(As modified up to the 30th June 1905.)*

Preamble. Shipping Offices (Sections 2—8). Examinations and Certificates of Masters and Mates (Sections 9—17). Engagement of Seamen (Sections 18—35).

Regulation of Advances (Sections 36—37). *Allotment of Wages* (Sections 38—40). *Discharge and Payment of Wages* (Sections 41—46). *Legal Rights to Wages* (Sections 47—54). *Mode of recovering Wages* (Sections 55—58). *Wages and Effects of Deceased Seamen* (Sections 59—63). *Provisions, Health, and Accommodation* (Sections 64—71). *Power of making Complaints* (Section 72). *Protection of seamen from Imposition* (Sections 73—78). *Discipline* (Sections 79—102). *Official Logs* (Sections 103—110). *Procedure, etc.* (Sections 111—113). *Miscellaneous* (Sections 114—118). *Table A and B.*

Act No. XIII of 1876.

An Act to amend the law relating to Merchant Seamen.

Preliminary (Sections 1—2). *Distressed Seamen* (Section 3). *Discharge of Seamen* (Section 4). *Engagement of Seamen* (Section 5). *Deserters* (Section 6). *Imprisoned Seamen* (Sections 7—8). *Accommodation of Seamen* (Section 9). *Meaning of 'established par value,'* (Section 10).

The Indian Merchant Shipping Act 1880.

(As modified up to the 15th October 1891.)

Act No. VII of 1880.

An Act to amend the law relating to Merchant Shipping, and for other purposes.

Chapter I. Preliminary.

1. Short title. Commencement.
2. Interpretation-clause.

Chapter II. Unseaworthy and Unsafe Ships.

3. Saving clause.
4. Interpretation-clause.

Sending or taking Unseaworthy Ship to Sea.

5. Every person sending unseaworthy ship to sea liable to penalty. Master taking unseaworthy ship to sea liable to penalty. Prosecution to be by, or with consent of, Local Government.

Implied Condition of Seaworthiness in Contract of Service.

6. Obligation of owner to crew with respect to seaworthiness.

Detention of Unsafe Ships by the Local Government.

7. Provisional detention by Local Government. Service of grounds on master.
8. Power to appoint surveyor. Action on receipt of his report. Order of final detention. Service of report on master and appeal to Court of Survey.
9. Option to owner or master of appointing assessor to accompany surveyor. Procedure where surveyor and assessor agree; where they differ.
10. Power to refer to Court of Survey.

Detaining officers.

11. Detaining officers. Their powers generally.
12. Their power to order provisional detention and survey. Detaining officer to report to Local Government.

Of the Court of Survey and of Appeals and References thereto.

13. Constitution of Court of Survey.
14. The Judge.
15. The assessors.
16. Judge to summon assessors.
17. Case to be in open Court.
18. Powers of Judge and assessors.
19. Judge may appoint surveyor.

20. Owner or master may attend at survey.
21. Power of Judge to detain or release ship.
22. Report to Local Government by Court.
23. Power of Local Government to make rules with respect to Court of Survey.

Scientific Referees.

24. Power to appoint referee to hear appeal.
25. Option to appellant to require referee to be appointed.
26. Referee to have powers of Court of Survey.

Costs of Detention and damages incidental thereto.

27. Liability of Government for costs and damages when ship wrongly detained.
28. Liability of shipowner for costs when ship rightly detained.
29. What included in costs of detention and survey.
30. Power to require from complainant security for costs, etc. Proviso as to complaint by one-fourth of crew.
31. Costs, etc., payable by Government recoverable from complainant.

Grain-cargoes.

32. Stowage of cargo of grain, etc. Penalty for improper stowage of such cargo.

Deck and Load-lines (Sections 33—43). *Supplemental Provisions* (Sections 44—53). *Chapter III. Distressed Seamen* (Sections 54—67). *Chapter IV. Ship Surveyors* (Sections 68—70).

Chapter V. Receivers of Wreck.

“Wreck” defined. 71. In this chapter “wreck” includes the following when found in the sea or any tidal water or on the shores thereof, that is to say: Goods which have been cast into the sea and then sink and remain under water; Goods which have been cast or fall into the sea and remain floating on the surface; Goods which are sunk in the sea, but are attached to a floating object in order that they may be found again; Goods which are thrown away or abandoned; and a vessel abandoned without hope or intention of recovery.

72. Savings.

73. Appointment of receivers.

Rules to be observed by person finding wreck: if he be the owner; if he be not the owner. 74. Any person finding and taking possession of any wreck within any local limits for which a receiver of wreck has been so appointed, or bringing within such limits any wreck which has been found and taken possession of elsewhere, shall as soon as practicable a) If he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished; b) If he be not the owner of such wreck, deliver the same to the receiver of wreck.

Government or person finding wreck entitled to salvage. Disputes concerning amount of salvage. 75. Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of section 74 by any person, not being the owner thereof, the Government or such other person so delivering such wreck, as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case. Any dispute arising concerning the amount due under this section shall be determined by a Magistrate, upon application to him for that purpose by either of the disputing parties.

76. Notice to be given by receiver.

Wreck may in certain cases be sold. 77. If after the publication of such notification the wreck is unclaimed or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the receiver of wreck in respect thereof, the receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and, if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

Proceeds how applied. 78. On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or, if no such person appear and claim the same, shall be held in deposit

for payment, without interest, to any person thereafter establishing his right to the same: Provided that he makes his claim within one year from the date of the sale.

79. Penalty for failure to give notice of, or to deliver, wreck to the receiver of wreck.

Chapter VI. Inspection of Ships with regard to Light and Fog-signals (Sections 80—83). Chapter VII. Miscellaneous (Sections 84—85).

The Schedule (See section 72). Declaration between the Government of the United Kingdom of Great Britain and Ireland and the Government of the French Republic, with reference to the disposal of the proceeds of Wrecks on their respective Coasts.

The Indian Merchant Shipping Act 1883.

(As modified up to the 1st December, 1904.)

Act No. V of 1883.

(23rd February, 1883.)

An Act for the further amendment of the law relating to Merchant Shipping.

Chapter I. Preliminary (Sections 1—4). Chapter II. Investigations into Shipping Casualties (Sections 5—17). Chapter III. Suspension and Cancellation of Certificates and Grant of fresh Certificates (Sections 18—24). Chapter IV. Agreements with Seamen (Sections 25—30). Chapter VI. Miscellaneous (Sections 32—38).

The Native Passenger Ships Act, 1887.

Act No. X of 1887.

An Act to consolidate and amend the law relating to Native Passenger Ships.

Chapter I. Preliminary (Sections 1—5). Chapter II. Rules for all Voyages (Sections 6—17). Chapter III. Rules for Short Voyages (Sections 18—20). Chapter IV. Rules for Long Voyages (Sections 21—30). Chapter V. Penalties (Sections 31—45). Procedure (Sections 46—50). Chapter VI. Supplemental Provisions (Sections 51—57).

Act No. VI of 1906.

An Act further to amend the law relating to merchant seamen.

1. Short title.
2. Amendment of section 23, Act I, 1859.
3. Amendment of section 24 A, Act I, 1859.

Act No. IX of 1856.

Passed by the Legislative Council of India. (Received the assent of the Governor General on the 11th April, 1856.)

An Act to amend the Law relating to Bills of Lading.

Preamble. Whereas by the custom of Merchants a Bill of Lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the Bill of Lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property; and whereas it frequently happens that the goods in respect of which Bills of Lading purport to be signed have not been laden on board, and it is proper that such Bills of Lading in the hands of a *bonâ fide* holder for value should not be questioned by the Master or other person signing the same, on the ground of the goods not having been laden as aforesaid: It is enacted as follows:

Rights under Bills of Lading to vest in consignee or endorsee. 1. Every consignee of goods named in a Bill of Lading, and every endorsee of a Bill of Lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the Bill of Lading had been made with himself.

Not to affect right of stoppage in transitu or claims for freight. 2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

Bill of Lading in hands of consignee, etc., conclusive evidence of the shipment as against Master, etc. Proviso. 3. Every Bill of Lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the Master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the Bill of Lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board. Provided that the Master or other person so signing may exonerate himself in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

The Provincial Insolvency Act, 1907 (III of 1907).

Act No. III of 1907.

Passed by the Governor General of India in Council. (Received the assent of the Governor General on the 15th March, 1907.)

An Act to consolidate and amend the Law relating to Insolvency in British India, as administered by Courts having jurisdiction outside the Presidency-towns and the Town of Rangoon.

Whereas it is expedient to consolidate and amend the law relating to insolvency in British India as administered by Courts having jurisdiction outside the Presidency-towns and the Town of Rangoon: It is hereby enacted as follows:

Short title, extent and commencement. 1. 1. This Act may be called the Provincial Insolvency Act, 1907. 2. It extends to the whole of British India, except the Scheduled Districts: and 3. It shall come into force on the first day of January 1908.

Definitions. 2. 1. In this Act, unless there is anything repugnant in the subject or context: a) "Available act of insolvency" means any act of insolvency available for an insolvency petition at the date of the presentation of the petition on which the order of adjudication is made; b) "Creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor; c) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns and of the Town of Rangoon; d) "Prescribed" means prescribed by rules made under this Act; e) "Property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit; f) "Secured creditor" includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land; and g) "The Court" means the Court exercising jurisdiction under this Act. 2. Save as herein otherwise provided, all words and expressions defined in the Code of Civil Procedure shall have the same meanings as those respectively assigned to them in the said Code.

Insolvency jurisdiction. 3. 1. The District Courts shall be the Courts having jurisdiction under this Act. Provided that the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall within the local limits of its

jurisdiction have concurrent jurisdiction with the District Court under this Act. 2. For the purposes of this Act, a Court of Small Causes shall be deemed to be subordinate to the District Court.

Acts of insolvency. 4. A debtor commits an act of insolvency in each of the following cases, namely: a) If, in British India or elsewhere, he makes a transfer of his property to a third person for the benefit of his creditors generally; b) If, in British India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors; c) If, in British India or elsewhere, he makes any transfer of his property or of any part thereof, or of any interest therein, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent; d) If, with intent to defeat or delay his creditors; (i) He departs or remains out of British India; (ii) He departs from his dwelling-house or usual place of business or otherwise absents himself; (iii) He secludes himself so as to deprive his creditors of the means of communicating with him; e) If any of his property has been sold in execution of the decree of any Court for the payment of money; f) If he petitions to be adjudged an insolvent under the provisions of this Act; g) If he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts; h) If he is imprisoned in execution of the decree of any Court for the payment of money. *Explanation.* For the purposes of this section the act of an agent may be the act of the principal.

Petition and adjudication. 5. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent. *Explanation.* The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Presentation and admission of petition. 6. 1. Every insolvency petition shall be in writing, and shall be signed and verified in the manner prescribed by the Code of Civil Procedure for signing and verifying plaints, and the procedure laid down by the said Code with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of such petitions. 2. Every insolvency petition shall be presented to a Court having jurisdiction under this Act in any local area in which the debtor ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, where he is in custody. 3. The debtor shall not be entitled to present an insolvency petition unless: a) His debts amount to five hundred rupees; or b) He has been arrested or imprisoned in execution of the decree of any Court for the payment of money; or c) An order of attachment in execution of such a decree has been made, and is subsisting, against his property. 4. A creditor shall not be entitled to present an insolvency petition against a debtor unless: a) The debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and b) The debt is a liquidated sum payable either immediately or at some certain future time, and c) The act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition. 5. If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor. 6. No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

Withdrawal of petitions. 7. No petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.

Consolidation of petitions. 8. Where two or more insolvency petitions are presented against the same debtor or where separate petitions are presented against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

Power to change carriage of proceedings. 9. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner

any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor.

Continuance of proceedings on death of debtor. 10. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Contents of petition. 11. 1. Every insolvency petition presented by a debtor shall contain the following particulars, namely: a) A statement that the debtor is unable to pay his debts; b) The place where he ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody; c) The Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property; together with particulars of the decree in respect of which any such order has been made; d) The amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by, him; e) The amount and particulars of all his property, together with: (i) A specification of the value of all such property not consisting of money; (ii) The place or places at which any such property is to be found; and (iii) A declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree. 2. Every insolvency petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (b) of subsection 1, and shall also specify: a) The act of insolvency committed by such debtor together with the date of its commission; and b) The amount and particulars of his or their pecuniary claim or claims against such debtor.

Procedure on admission of petition. 12. 1. Where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing the petition. 2. Notice of the order under sub-section (1) shall be given to creditors by publication in the local official Gazette, and in such other manner as may be prescribed. 3. Where the debtor is not the petitioner, notice of the order under sub-section (1) shall be served on him in the manner provided for the service of summons.

Interim proceedings against debtor. 13. At the time of making the order referred to in section 12, sub-section (1), or at any subsequent time before adjudication, the Court may, either of its own motion or on the application of any creditor, make one or more of the following orders, namely: 1. Order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that, in default of giving such security, he shall be detained in the civil prison; 2. Order the appointment of an interim receiver of the property of the debtor or of any part thereof; 3. Order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree; 4. Order a warrant to issue with or without bail for the arrest of the debtor and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary. Provided that an order under clause (2), clause (3) or clause (4) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court: (i) Has absconded or has departed from the local limits of the jurisdiction of the Court or is about to abscond or to depart from such limits, or is remaining outside them, or (ii) Has failed to disclose or has concealed, destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

Procedure at hearing. 14. 1. On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof: a) That the creditor or the debtor, as the case may be, is entitled to present the petition; b) That the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order referred to in sec-

tion 12, sub-section (1), and c) That the debtor has committed the act of insolvency alleged against him. 2. The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon. 3. The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition. 4. A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the Judge and shall form part of the record of the case.

Dismissal of petition. 15. 1. Where the Court is not satisfied with the proof of the right to present the petition or of the service of notice on the debtor as required by section 12, sub-section 3, or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition. 2. Where a petition presented by a creditor is dismissed under sub-section (1) and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor, award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the petition and the proceedings thereon, and such amount may be realised as if it were a fine. 3. An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon.

Order of adjudication. 16. 1. Where a petition is not dismissed under the preceding section and the debtor is unable to propose any composition or scheme which shall be accepted by the creditors and approved by the Court in the manner hereinafter provided, the Court shall make an order of adjudication. 2. On the making of an order of adjudication: a) The whole of the property of the insolvent, save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree, shall vest in the Court or in a receiver as hereinafter provided and shall become divisible among the creditors, and b) The insolvent, if in prison for debt, shall be released; and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall during the pendency of the insolvency proceedings have any remedy against the property or person of the insolvent in respect of the debt or commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose. 3. For the purposes of sub-section (2), clause (a), all goods being, at the date of the presentation of the petition on which the order is made, in the possession, order or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent. 4. All such property as may be acquired by or devolve on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver and become divisible among the creditors in accordance with the provisions of sub-section (2), clause (a). 5. Nothing in this section shall affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed. 6. An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made. 7. Notice of an order of adjudication stating the name, address and description of the insolvent, the date of the adjudication and the Court by which the adjudication is made, shall be published in the local official Gazette and in such other manner as may be prescribed.

Power to cancel one of concurrent orders of adjudication. 17. If in any case in which an order of adjudication has been made it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another Court against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may rescind the order of adjudication and stay all proceedings or dismiss the petition on such terms (if any) as the Court thinks fit.

Appointment of receiver. 18. 1. The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the

insolvent, and such property shall thereupon vest in such receiver. 2. Subject to such conditions as may be prescribed, the Court may: a) Require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property; and b) By general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent. 3. Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is, from the possession or custody thereof. Provided that nothing in this section shall be deemed to authorise the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove. 4. Where a receiver appointed under this section: a) Fails to submit his accounts at such periods and in such form as the Court directs, or b) Fails to pay the balance due from him thereon as the Court directs, or c) Occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

Power to appoint Official Receivers. 19. 1. The Local Government may appoint such persons as it thinks fit (to be called "Official Receivers") to be receivers under this Act within such local limits as it may prescribe. 2. Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Act, he shall be the receiver for the purpose of every order appointing a receiver issued by any such Court, unless the Court for special reasons otherwise directs. 3. Any sum payable under section 18, sub-section (2), clause (b), in respect of the services of an Official Receiver shall be credited to such fund as the Local Government may direct. 4. Every Official Receiver shall receive such remuneration out of the said fund or otherwise as the Local Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

Duties and powers of receiver. 20. Subject to the provisions of this Act, the receiver shall, with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may: a) Sell all or any part of the property of the insolvent; b) Give receipts for any money received by him; and may, by leave of the Court, do all or any of the following things, namely: c) Carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same; d) Institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent; e) Employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court; f) Accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulations as to security and otherwise as the Court thinks fit; g) Mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts; h) Refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon; i) Divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

Special provisions in regard to immoveable property. 21. 1. In any local area in which a declaration has been made under section 320 of the Code of Civil Procedure¹⁾ and is in force, no sale of immoveable property paying revenue to the Government or held or let for agricultural purposes shall be made by the receiver; but, after the other property of the insolvent has been realised, the Court shall ascertain: a) The amount required to satisfy the debts proved under this Act after deducting the monies already received, b) The immoveable property of the insolvent remaining unsold, and c) The incumbrances (if any) existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 of the said Code²⁾ as he thinks fit, and subject to the provisions of those sections so far as they are applicable, and shall hold at the disposal of the Court all sums that may come

¹⁾ Now See Act V of 1908. — ²⁾ Now See Act V of 1908. These Sections have been repealed by that Act and not re-enacted.

to his hands by the exercise of such powers. 2. Nothing in this Act shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against immoveable property; and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Act as if it were such a decree or order.

Appeal to Court against receiver. 22. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of and make such order as it thinks just. Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the order or decision complained of.

Powers of Court if no receiver appointed. 23. Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Act.

Schedule of creditors. 24. 1. All persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Act shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts. Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt shall not be included in the schedule. 2. A copy of every such schedule shall be posted in the Court-house. 3. Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Act, and not entered in the schedule, and the Court, after causing notice to be served on the insolvent and the other creditors, and hearing their objections (if any), shall comply with or reject the application.

Mode of proof. 25. 1. A debt may be proved under this Act by delivering, or sending by post in a registered letter, to the Court an affidavit verifying the debt. 2. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The Court may at any time call for the production of the vouchers.

Disallowance and reduction of entries in schedule. 26. 1. Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry or reduce the amount of the debt. 2. The Court may also, after like inquiry, expunge an entry or reduce the amount of a debt upon the application of a creditor where no receiver has been appointed, or where the receiver declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

Compositions and schemes of arrangement. 27. 1. Where a debtor, whether before or after the making of an order of adjudication, submits a proposal for a composition in satisfaction of this debts or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal and shall issue a notice to all creditors by publication in the local official Gazette and in such other manner as may be prescribed. 2. If on the consideration of the proposal a majority in number and three-fourths in value of all the creditors whose debts are proved and who are present in person or by pleader, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors. 3. The debtor may at the meeting amend the terms of his proposal if the amendment is, in the opinion of the Court, calculated to benefit the general body of creditors. 4. Where the Court is of opinion, after hearing the report of the receiver, if a receiver has been appointed, and after considering any objections which may be made by or on behalf of any creditor, that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal. 5. If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than six annas in the rupee on all the unsecured debts provable against the debtor's estate. 6. In any other case the

Court may either approve or refuse to approve the proposal. 7. If the Court approves the proposal, the terms shall be embodied in an order of the Court and the Court shall frame a schedule in accordance with the provisions of section 24, the order of adjudication (if any) shall be annulled, and the composition or scheme shall be binding on all the creditors entered in the said schedule so far as relates to any debts entered therein. 8. If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, adjudge the debtor insolvent and annul the composition or scheme but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme. When a debtor is adjudged insolvent under this sub-section, all debts provable in other respects which have been contracted before the date of such adjudication shall be provable in the insolvency. 9. No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

Debts provable under this Act. 28. 1. Save as provided by sub-section (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Act. 2. Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable under this Act.

Debt payable at a future time. 29. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Mutual dealings and set-off. 30. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

Secured creditors. 31. 1. Where a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised. 2. Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole debt. 3. Where a secured creditor does not either realise or relinquish his security, he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed. 4. Where a security is so valued, the Court may at any time before realisation redeem it on payment to the creditor of the assessed value. 5. Where a creditor, after having valued his security, subsequently realises it, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor. 6. Where a secured creditor does not comply with the provisions of this section, he shall be excluded from all share in any dividend.

Interest. 32. 1. On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum: a) If the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or, b) If the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication. 2. Where a debt which has been proved under this Act includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at

a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Priority of debts. 33. 1. In the distribution of the property of the insolvent there shall be paid in priority to all other debts: a) All debts due to the Crown or to any local authority; and b) All salary or wages, not exceeding twenty rupees in all, of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition. 2. The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves. 3. Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them. 4. In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and, where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property. 5. Subject to the provisions of this Act, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without any preference. 6. Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule.

Restriction of rights of creditor under execution. 34. 1. Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the order of adjudication. 2. Nothing in this section shall affect the rights of a secured creditor in respect of the property against which the decree is executed. 3. A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the receiver.

Duties of Court executing decree as to property taken in execution. 35. Where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver, but the costs of the execution shall be a first charge on the property so delivered, and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance of voluntary transfer. 36. Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the receiver and may be annulled by the Court.

Avoidance of preference in certain cases. 37. 1. Every transfer of property or of any interest therein, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court. 2. This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.

Protection of bonâ fide transactions. 38. Subject to the foregoing provisions of this Act with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency: a) Any payment by the insolvent to any of

his creditors; b) Any payment or delivery to the insolvent; c) Any transfer by the insolvent for valuable consideration; or d) Any contract or dealing by or with the insolvent for valuable consideration. Provided that any such transaction takes place before the date of the order of adjudication.

Dividends. 39. 1. In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet: a) Debts provable under this Act and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs; b) Debts provable under this Act, the subject of claims not yet determined; c) Disputed proofs or claims; and d) The expenses necessary for the administration of the estate or otherwise. 2. Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends. 3. Any creditor who has not proved his debt before the declaration of any dividend or dividends, shall be entitled to be paid, out of any money for the time being in the hands of the receiver, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends; but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein. 4. When the receiver has realised all the property of the insolvent or so much thereof as can in the opinion of the Court be realised without needlessly protracting the receivership, he shall declare a final dividend; but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified but not proved, that if they do not prove their claims within the time limited by the notice he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or if the Court on application by any such claimant grants him further time for establishing his claim then on the expiration of such further time, the property of the insolvent shall be divided among the creditors entered in the schedule without regard to the claims of any other persons. 5. No suit for a dividend shall lie against the receiver; but, where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who is entered in the schedule, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Management by and allowance to insolvent. 40. 1. The Court may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Court may direct. 2. The Court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself and his family, or in consideration of his services if he is engaged in winding up his estate; but any such allowance may, at any time, be varied or determined by the Court.

Right of insolvent to surplus. 41. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest as provided by this Act, and of the expenses of the proceedings taken thereunder.

Power to annul adjudication of insolvency. 42. 1. Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, or where a composition or scheme has been approved by the Court under section 27, the Court shall, on the application of the debtor or of any other person interested, by order in writing, annul the adjudication. 2. Where an adjudication is annulled under subsection (1), all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Court or receiver shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare. 3. Notice of every order annulling an adjudication shall be published in the local official Gazette and in such other manner as may be prescribed.

Duties of debtors. 43. 1. Every debtor, whether before or after the making of an order of adjudication, shall produce all books of account, give such inventories

of his property, and such lists of his creditors and debtors and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend at such times before the Court or receiver, execute such instruments, and generally give such aid in the realisation of his property and the distribution of the proceeds amongst his creditors, as may be required by the Court or receiver, or as may be prescribed. 2. If a debtor, whether before or after the making of an order of adjudication: a) Wilfully makes false entries in the inventories or lists referred to in sub-section (1), or b) Fraudulently or vexatiously conceals, destroys, transfers, removes or refuses to produce any property or books of account, or c) Commits any other act of bad faith in the performance of the duties imposed on him by this section, the Court may sentence him, by order in writing, to simple imprisonment for a term which may extend to one year; and in every such case the Court shall record the facts constituting the offence with the statement (if any) made by the debtor.

Discharge. 44. 1. A debtor may, at any time after the order of adjudication, apply to the Court for an order of discharge; and the Court shall fix a day, notice whereof shall be given by publication in the local official Gazette and in such other manner as may be prescribed, for hearing such application, and any objections which may be made thereto. 2. Subject to the provisions of this section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver: a) Grant or refuse an absolute order of discharge; or b) Suspend the operation of the order for a specified time; or c) Grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property. 3. The Court shall refuse to grant an absolute order of discharge on proof of any of following facts, namely: a) That the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible; b) That the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency; c) That the insolvent has continued to trade after knowing himself to be insolvent; d) That the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it; e) That the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities; f) That the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs; g) That the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they became due, given an undue preference to any of his creditors; h) That the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors; i) That the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust. 4. For the purposes of this section, the report of the receiver shall be deemed to be evidence; and the Court may presume the correctness of any statement contained therein. 5. The powers of suspending, and of attaching conditions to, an insolvent's discharge may be exercised concurrently.

Effect of order of discharge. 45. 1. An order of discharge shall not release the insolvent from: a) Any debt due to the Crown; b) Any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or c) Any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party. 2. Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts entered in the schedule. 3. An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him or any person who was surety for him.

Appeals. 46. 1. Any person aggrieved by an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to

the District Court, and the order of the District Court upon such appeal shall be final: Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit. 2. Any person aggrieved by an order made by the District Court under section 15, 16, 24, 26, 36, 37, 42, 43, sub-section (2), or 44 otherwise than in appeal from an order made by a subordinate Court may appeal to the High Court. 3. Any person aggrieved by any other order made by a District Court otherwise than in appeal from an order made by a subordinate Court may appeal to the High Court by leave of the District Court or of the High Court. 4. The periods of limitation for appeals to the District Court and to the High Court under this section shall be thirty days and ninety days respectively.

General powers of Courts. 47. 1. Subject to the provisions of this Act, the Court, in regard to proceedings under this Act, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction. 2. Subject as aforesaid, High Courts and District Courts, in regard to proceedings under this Act in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

Summary administration. 48. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value five hundred rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon: a) The estate shall, where practicable, be distributed in a single dividend; b) The provisions of this Act shall be subject to such other modifications as may be prescribed with the view of saving expense and simplifying procedure. Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

Costs. 49. The costs of any proceeding under this Act, including the costs of maintaining a debtor in the civil prison, shall, subject to any rules made under this Act, be in the discretion of the Court in which the proceeding is had.

Courts to be auxiliary to each other. 50. All Courts having jurisdiction in insolvency and the officers of such Courts respectively shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

Power to make rules. 51. 1. The High Court may, with the previous sanction, in the case of the High Court of Judicature at Fort William in Bengal, of the Governor General in Council, and, in the case of any other High Court, of the Local Government, make rules for carrying into effect the provisions of this Act. 2. In particular and without prejudice to the generality of the foregoing power, such rules may provide: a) For the appointment and remuneration of receivers (other than Official Receivers), the audit of the accounts of all receivers and the costs of such audit; b) For meetings of creditors, and c) For the procedure to be followed in the case of estates to be administered in a summary manner. 3. All rules made under this section shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall, on such publication, have effect as if enacted in this Act.

Delegation of powers to Official Receivers. 52. 1. The High Court, with the like sanction, may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, the Official Receiver shall, subject to the directions of the Court, have all or any of the following powers, namely: a) To hear insolvency petitions, to examine the debtor and to make orders of adjudication; b) To frame schedules and to admit or reject proofs of creditors; c) To grant orders of discharge; d) To approve compositions or schemes of arrangement; e) To make interim orders in any case of urgency; f) To hear and determine any unopposed or *ex parte* application. 2. Subject to the appeal to the Court provided for by section 22, any order made or act done by the Official Receiver in the exercise of the said powers shall be deemed the order or act of the Court.

Undischarged insolvent obtaining credit. 53. 1. An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both. 2. Where the Court has reason to believe that an undischarged insolvent has committed the offence referred to in sub-section (1), the Court, after making any preliminary inquiry that may be necessary, may send the case for trial to the nearest Magistrate of the first class, and may send the accused in custody or take sufficient security for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial.

Power of Local Government to bar application of certain provisions to certain Courts. 54. Any Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare that the following provisions or any of them shall not apply to insolvency proceedings in any Court or Courts having jurisdiction under this Act in any part of the territories administered by such Local Government, namely: section 15, sub-sections (2) and (3), section 16, sub-section (3), sections 25 to 40 (except sub-section (1), clause a), and sub-section (4) of section 33), section 44, sub-sections (3) and (4), and section 53.

Savings. 55. Nothing in this Act shall: a) Affect the Indian Insolvency Act, 1848, or section 8 of the Lower Burma Courts Act, 1900, or b) Apply to cases to which Chapter IV of the Dekkhan Agriculturists' Relief Act, 1879, is applicable.

Repeals. 56. 1. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof. 2. Where in any enactment or instrument in force at the date of the commencement of this Act reference is made to Chapter XX (Of Insolvent Judgment-debtors) of the Code of Civil Procedure, 1877, or of the Code of Civil Procedure, 1882, or to any section of either of those Chapters, such reference shall, so far as may be practicable, be construed as applying to this Act or to the corresponding section thereof.

The Schedule.

Enactments repealed.

(See section 56.)

| Year. | No. | Short title. | Extent of repeal. |
|-------|-----|---|---|
| 1872 | IV | The Punjab Laws Act, 1872. | Sections 22 to 23. |
| 1877 | XV | The Indian Limitation Act, 1877. | No. 174 of the Second Schedule. |
| 1882 | XIV | The Code of Civil Procedure. | Section 341, clause e), and Chapter XX (sections 344 to 360 A). |
| 1888 | VII | The Civil Procedure Code Amendment Act, 1888. | Section 31. |

The Presidency-Towns Insolvency Act, 1909.

Act No. III of 1909.

Acts passed by the Council of the Governor General of India.

An Act to amend the Law of Insolvency in the Presidency-towns and the Town of Rangoon.

Whereas it is expedient to amend the law relating to insolvency in the Presidency-towns and the town of Rangoon: It is hereby enacted as follows.

Preliminary.

Short title and commencement. 1. 1. This Act may be called the Presidency-towns Insolvency Act, 1909. 2. It shall come into force on the first day of January 1910.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context: a) "Creditor" includes a decree-holder; b) "Debt" includes a judgment-debt, and "debtor" includes a judgment-debtor; c) "Official assignee" includes an acting official assignee; d) "Prescribed" means prescribed by rules; e) "Property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit; f) "Rules" means rules made under this Act; g) "Secured creditor" includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land; h) "The Court" means the Court exercising jurisdiction under this Act; and i) "Transfer of property" includes a transfer of any interest therein and any charge created thereon.

Part I. Constitution and Powers of Court.

Jurisdiction.

Courts having jurisdiction in insolvency. 3. The Courts having jurisdiction in insolvency under this Act shall be: a) The High Courts of Judicature at Fort William, Madras and Bombay; and b) The Chief Court of Lower Burma.

Jurisdiction to be exercised by a single Judge. 4. All matters in respect of which jurisdiction is given by this Act shall be ordinarily transacted and disposed of by or under the direction of one of the Judges of the Court, and the Chief Justice or Chief Judge shall, from time to time, assign a Judge for that purpose.

Exercise of jurisdiction in chambers. 5. Subject to the provisions of this Act and of rules, the Judge of a Court exercising jurisdiction in insolvency may exercise in chambers the whole or any part of his jurisdiction.

Delegation of powers to officers of Court. 6. 1. The Chief Justice or Chief Judge may, from time to time, direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, an officer of the Court appointed by him in this behalf shall have all or any of the powers in this section mentioned; and any order made or act done by such officer in the exercise of the said powers shall be deemed the order or act of the Court. 2. The powers referred to in sub-section (1) are the following, namely: a) To hear insolvency petitions presented by debtors, and to make orders of adjudication thereon; b) To hold the public examination of insolvents; c) To make any order or exercise any jurisdiction which is prescribed as proper to be made or exercised in chambers; d) To hear and determine any unopposed or *ex parte* application; e) To examine any person summoned by the Court under section 36. 3. An officer appointed under this section shall not have power to commit for contempt of Court.

Power of Court to decide all questions arising in insolvency. 7. Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

Appeals.

Appeals in insolvency. 8. 1. The Court may review, rescind or vary any order made by it under its insolvency jurisdiction. 2. Orders in insolvency matters shall, at the instance of any person aggrieved, be subject to appeal as follows, namely: a) An appeal from an order made by an officer of the Court empowered under section 6 shall lie to the Judge assigned under section 4 for the transaction and disposal of matters in insolvency and no further appeal shall lie except by leave of such Judge; b) Save as otherwise provided in clause (a), an appeal from an order made by a Judge in the exercise of the jurisdiction conferred by this Act shall lie in the same way and be subject to the same provisions as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court.

Part II. Proceedings from Act of Insolvency to Discharge.

Acts of insolvency.

Acts of insolvency. 9. A debtor commits an act of insolvency in each of the following cases, namely: a) If, in British India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally; b) If, in British India or elsewhere, he makes a transfer of his property

or of any part thereof with intent to defeat or delay his creditors; c) If, in British India or elsewhere, he makes any transfer of his property or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent; d) If, with intent to defeat or delay his creditors: (i) He departs or remains out of British India; (ii) He departs from his dwelling-house or usual place of business or otherwise absents himself; (iii) He secludes himself so as to deprive his creditors of the means of communicating with him; e) If any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money; f) If he petitions to be adjudged an insolvent; g) If he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts; h) If he is imprisoned in execution of the decree of any Court for the payment of money. *Explanation.* For the purposes of this section, the act of an agent may be the act of the principal, even though the agent have no specific authority to commit the act.

Order of adjudication.

Power to adjudicate. 10. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent. *Explanation.* The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Restrictions on jurisdiction. 11. The Court shall not have jurisdiction to make an order of adjudication, unless: a) The debtor is, at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction; or b) The debtor, within a year before the date of the presentation of the insolvency petition, has ordinarily resided or had a dwellinghouse or has carried on business either in person or through an agent within the limits of the ordinary original civil jurisdiction of the Court; or c) The debtor personally works for gain within those limits; or d) In the case of a petition by or against a firm of debtors, the firm has carried on business within a year before the date of the presentation of the insolvency petition within those limits.

Conditions on which creditor may petition. 12. 1. A creditor shall not be entitled to present an insolvency petition against a debtor unless: a) The debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and b) The debt is a liquidated sum payable either immediately or at some certain future time, and c) The act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition. 2. If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

Proceedings and order on creditor's petition. 13. 1. A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts. 2. At the hearing the Court shall require proof of: a) The debt of the petitioning creditor, and b) The act of insolvency or, if more than one act of insolvency is alleged in the petition, some one of the alleged acts of insolvency. 3. The Court may adjourn the hearing of the petition and order service thereof on the debtor. 4. The Court shall dismiss the petition: a) If it is not satisfied with the proof of the facts referred to in sub-section (2); or b) If the debtor appears and satisfies the Court that he is able to pay his debts, or that he has not committed an act of insolvency or that for other sufficient cause no order ought to be made. 5. The Court may make an order of adjudication if it is satisfied with the proof above referred to, or if on a hearing adjourned under sub-section (3) the debtor does not appear and service of the petition on him is proved, unless in its opinion the peti-

tion ought to have been presented before some other Court having insolvency jurisdiction. 6. Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt. 7. Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid. 8. A creditor's petition shall not, after presentation, be withdrawn without the leave of the Court.

Conditions on which debtor may petition. 14. A debtor shall not be entitled to present an insolvency petition unless: a) His debts amount to five hundred rupees, or b) He has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or c) An order of attachment in execution of such a decree has been made and is subsisting against his property.

Proceedings and order on debtor's petition. 15. 1. A debtor's petition shall allege that the debtor is unable to pay his debts, and, if the debtor proves that he is entitled to present the petition, the Court may thereupon make an order of adjudication, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction. 2. A debtor's petition shall not, after presentation, be withdrawn without the leave of the Court.

Discretionary powers as to appointment of interim receiver. 16. The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of an insolvency petition and before an order of adjudication is made, appoint the official assignee to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or any part thereof, and the official assignee shall thereupon have such of the powers conferable on a receiver appointed under the Code of Civil Procedure, 1908, as may be prescribed.

Effect of order of adjudication. 17. On the making of an order of adjudication the property of the insolvent wherever situate shall vest in the official assignee and shall become divisible among his creditors, and thereafter, except as directed by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt, or shall commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose. Provided that this section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

Stay of proceedings. 18. 1. The Court may, at any time after the making of an order of adjudication, stay any suit or other proceeding pending against the insolvent before any Judge or Judges of the Court or in any other Court subject to the superintendence of the Court. 2. An order made under sub-section (1) may be served by sending a copy thereof, under the seal of the Court, by post to the address for service of the plaintiff or other party prosecuting such suit or proceeding, and notice of such order shall be sent to the Court before which the suit or proceeding is pending. 3. Any Court in which proceedings are pending against a debtor may on proof that an order of adjudication has been made against him under this Act, either stay the proceedings or allow them to continue on such terms as it may think just.

Power to appoint special manager. 19. 1. If in any case the Court, having regard to the nature of the debtor's estate or business or to the interests of the creditors generally, is of opinion that a special manager of the estate or business ought to be appointed to assist the official assignee, the Court may appoint a manager thereof accordingly to act for such time as the Court may authorize, and to have such powers of the official assignee as may be entrusted to him by the official assignee or as the Court may direct. 2. The special manager shall give security and furnish

accounts in such manner as the Court may direct, and shall receive such remuneration as the Court may determine.

Advertisement of order of adjudication. 20. Notice of every order of adjudication, stating the name, address and description of the insolvent, the date of the adjudication, the Court by which the adjudication is made and the date of presentation of the petition, shall be published in the Gazette of India and in the local official Gazette and in such other manner as may be prescribed.

Annulment of adjudication.

Power for Court to annul adjudication in certain cases. 21. 1. Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court may, on the application of any person interested, by order annul the adjudication. 2. For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

Concurrent proceedings in British Courts. 22. Where it is proved to the satisfaction of the Court that insolvency proceedings are pending in any other British Court whether within or without British India against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication or may stay all proceedings thereon.

Proceedings on annulment. 23. 1. Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official assignee or other person acting under this authority, or by the Court, shall be valid, but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such terms and subject to such conditions (if any) as the Court may declare by order. 2. Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled as aforesaid, the Court may, if it thinks fit, recommit the debtor to his former custody, and the jailor or keeper of the prison to whose custody such debtor is so recommitted shall receive such debtor into his custody according to such recommitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if such order had not been made. 3. Notice of the order annulling an adjudication shall be published in the Gazette of India and in the local official Gazette and in such other manner as may be prescribed.

Proceedings consequent on order of adjudication.

Insolvent's schedule. 24. 1. Where an order of adjudication is made against a debtor, he shall prepare and submit to the Court a schedule verified by affidavit, in such form and containing such particulars of and in relation to his affairs as may be prescribed. 2. The schedule shall be so submitted within the following times, namely: a) If the order is made on the petition of the debtor, within thirty days from the date of the order; b) If the order is made on the petition of a creditor, within thirty days from the date of service of the order. 3. If the insolvent fails, without reasonable excuse, to comply with the requirements of this section, the Court may, on the application of the official assignee or of any creditor, make an order for his committal to the civil prison. 4. If the insolvent fails to prepare and submit any such schedule as aforesaid, the official assignee may, at the expense of the estate, cause such a schedule to be prepared in manner prescribed.

Protection order. 25. 1. Any insolvent who shall have submitted his schedule as aforesaid may apply to the Court for protection, and the Court may, on such application, make an order for the protection of the insolvent from arrest or detention. 2. A protection order may apply either to all the debts mentioned in the schedule or to any of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit. 3. A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order

shall apply, and any insolvent arrested or detained contrary to the terms of such order shall be entitled to his release. Provided that no such order shall operate to prejudice the right of any creditor in the event of such order being revoked or the adjudication annulled. 4. Any creditor shall be entitled to appear and oppose the grant of a protection order, but the insolvent shall be *prima facie* entitled to such order on production of a certificate signed by the official assignee that he has so far conformed to the provisions of this Act. 5. The Court may make a protection order before an insolvent has submitted his schedule if it thinks it necessary to do so in the interests of the creditors.

Meetings of creditors. 26. 1. At any time after the making of an order of adjudication against an insolvent, the Court, on the application of a creditor or of the official assignee, may direct that a meeting of creditors shall be held to consider the circumstances of the insolvency and the insolvent's schedule and his explanation thereof, and generally as to the mode of dealing with the property of the insolvent. 2. With respect to the summoning of and proceedings at a meeting of creditors the rules in the First Schedule shall be observed.

Public examination of the insolvent. 27. 1. Where the Court makes an order of adjudication it shall hold a public sitting on a day to be appointed by the Court of which notice shall be given to creditors in the prescribed manner for the examination of the insolvent, and the insolvent shall attend thereat, and shall be examined as to his conduct, dealings and property. 2. The examination shall be held as soon as conveniently may be after the expiration of the time for the filing of the insolvent's schedule. 3. Any creditor who has tendered a proof or a legal practitioner on his behalf may question the insolvent concerning his affairs and the causes of his failure. 4. The official assignee shall take part in the examination of the insolvent; and for the purpose thereof, subject to such directions as the Court may give, may be represented by a legal practitioner. 5. The Court may put such questions to the insolvent as it may think expedient. 6. The insolvent shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing and shall be read over either to or by the insolvent and signed by him, and may thereafter be used in evidence against him and shall be open to the inspection of any creditor at all reasonable times. 7. When the Court is of opinion that the affairs of the insolvent have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not preclude the Court from directing further examination of the insolvent whenever it may deem fit to do so. 8. Where the insolvent is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, or is a woman who according to the customs and manners of the country ought not to be compelled to appear in public, the Court may make an order dispensing with such examination, or directing that the insolvent be examined on such terms, in such manner, and at such place as to the Court seems expedient.

Composition and schemes of arrangement.

Submission of proposal and acceptance by creditors. 28. 1. An insolvent may at any time after the making of an order of adjudication submit a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs in the prescribed form, and such proposal shall be submitted by the official assignee to a meeting of creditors. 2. The official assignee shall send to each creditor who is mentioned in the schedule, or who has tendered a proof before the meeting, a copy of the insolvent's proposals with a report thereon, and if on the consideration of such proposal the majority in number and three-fourths in value of all the creditors whose debts are proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors. 3. The insolvent may at the meeting amend the terms of his proposal if the amendment is in the opinion of the official assignee calculated to benefit the general body of creditors. 4. Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form addressed to the official assignee so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

Approval of proposal by Court. 29. 1. The insolvent or the official assignee may after the proposal is accepted by the creditors apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved. 2. Except where an estate is being summarily administered or special leave of the Court has been obtained, the application shall not be heard until after the conclusion of the public examination of the insolvent. Any creditor who has proved may be heard by the Court in opposition to the application notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal. 3. The Court shall before approving the proposal hear a report of the official assignee as to the terms thereof and as to the conduct of the insolvent and any objections which may be made by or on behalf of any creditor. 4. Where the Court is of opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors or in any case in which the Court is required to refuse the insolvent's discharge, the Court shall refuse to approve the proposal. 5. Where any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than four annas in the rupee on all the unsecured debts provable against the debtor's estate. 6. No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent. 7. In any other case the Court may either approve or refuse to approve the proposal.

Order on approval. 30. 1. If the Court approves the proposal, the terms shall be embodied in an order of the Court, and an order shall be made annulling the adjudication, and the provisions of section 23, sub-sections (1) and (3), shall thereupon apply, and the composition or scheme shall be binding on all the creditors so far as relates to any debt due to them from the insolvent and provable in insolvency. 2. The provisions of the composition or scheme may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court.

Power to re-adjudge debtor insolvent. 31. 1. If default is made in the payment of any instalment due in pursuance of any composition or scheme, approved as aforesaid, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, re-adjudge the debtor insolvent and annul the composition or scheme, and the property of the debtor shall thereupon vest in the official assignee but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme. 2. Where a debtor is re-adjudged insolvent under sub-section (1), all debts provable in other respects which have been contracted before the date of such re-adjudication shall be provable in the insolvency.

Limitation of effect of composition or scheme. 32. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the insolvent would not be discharged by an order of discharge in insolvency, unless the creditor assents to the composition or scheme.

Control over person and property of insolvent.

Duties of insolvent as to discovery and realisation of property. 33. 1. Every insolvent shall, unless prevented by sickness or other sufficient cause, attend any meeting of his creditors which the official assignee may require him to attend, and shall submit to such examination and give such information as the meeting may require. 2. The insolvent shall: a) Give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, b) Submit to such examination in respect of his property or his creditors, c) Wait at such times and places on the official assignee or special manager; d) Execute such powers-of-attorney, transfers and instruments, and e) Generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be required by the official assignee or special manager or may be prescribed or be directed by the Court by any special order or orders

made in reference to any particular case, or made on the occasion of any special application by the official assignee or special manager, or any creditor or person interested. 3. The insolvent shall aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors. 4. If the insolvent wilfully fails to perform the duties imposed upon him by this section, or to deliver up possession to the official assignee of any part of his property, which is divisible amongst his creditors under this Act and which is for the time being in his possession or under his control, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

Arrest of insolvent. 34. 1. The Court may, either of its own motion or at the instance of the official assignee or of any creditor, by warrant addressed to any police-officer or prescribed officer of the Court, cause an insolvent to be arrested, and committed to the civil prison or if in prison to be detained until such time as the Court may order, under the following circumstances, namely: a) If it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in insolvency against him; or b) If it appears to the Court that there is probable reason for believing that he is about to remove his property with a view of preventing or delaying possession being taken of it by the official assignee, or that there is probable reason for believing that he has concealed or is about to conceal or destroy any of his property or any books, documents or writings which might be of use to his creditors in the course of his insolvency; or c) If he removes any property in his possession above the value of fifty rupees without the leave of the official assignee. 2. No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

Redirection of letters. 35. Where the official assignee has been appointed interim receiver or an order of adjudication is made, the Court, on the application of the official assignee, may, from time to time, order that for such time, not exceeding three months, as the Court thinks fit, all post letters, whether registered or unregistered, parcels and money orders addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, or delivered by the Postal authorities in British India, to the official assignee, or otherwise as the Court directs; and the same shall be done accordingly.

Discovery of insolvent's property. 36. 1. The Court may, on the application of the official assignee or of any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in such manner as may be prescribed the insolvent or any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent, his dealings or property; and the Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property. 2. If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination. 3. The Court may examine any person so brought before it concerning the insolvent, his dealings or property, and such person may be represented by a legal practitioner. 4. If on the examination of any such person the Court is satisfied that he is indebted to the insolvent, the Court may, on the application of the official assignee, order him to pay to the official assignee, at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination. 5. If, on the examination of any such person, the Court is satisfied that he has in his possession any property belonging to the insolvent, the Court may, on the application of the official assignee, order him to deliver to the official assignee that property, or any part thereof, at such time, in such manner and on such terms as to the Court may seem just. 6. Orders made under sub-sections (4) and (5) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil

Procedure, 1908, respectively. 7. Any person making any payment or delivery in pursuance of an order made under sub-section (4) or sub-section (5) shall by such payment or delivery be discharged from all liability whatsoever in respect of such debt or property.

Power to issue commissions. 37. The Court shall have the same powers to issue commissions and letters of request for the examination on commission or otherwise of any person liable to examination under section 36 as it has for the examination of witnesses under the Code of Civil Procedure, 1908.

Discharge of Insolvent.

Discharge of insolvent. 38. 1. An insolvent may, at any time after the order of adjudication, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but, save where the public examination of the insolvent has been dispensed with under the provisions of this Act, the application shall not be heard until after such examination has been concluded. The application shall be heard in open Court. 2. On the hearing of the application, the Court shall take into consideration any report of the official assignee as to the insolvent's conduct and affairs, and, subject to the provisions of section 39, may: a) Grant or refuse an absolute order of discharge, or b) Suspend the operation of the order for a specified time, or c) Grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

Cases in which the Court must refuse an absolute discharge. 39. 1. The Court shall refuse the discharge in all cases where the insolvent has committed any offence under this Act, or under sections 421 to 424 of the Indian Penal Code, and shall, on proof of any of the facts hereinafter mentioned, either: a) Refuse the discharge; or b) Suspend the discharge for a specified time; or c) Suspend the discharge until a dividend of not less than four annas in the rupee has been paid to the creditors; or d) Require the insolvent as a condition of his discharge to consent to a decree being passed against him in favour of the official assignee for any balance or part of any balance of the debts provable under the insolvency which is not satisfied at the date of his discharge; such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the insolvent in such manner and subject to such conditions as the Court may direct; but in that case the decree shall not be executed without leave of the Court, which leave may be given on proof that the insolvent has since his discharge acquired property or income available for payment of his debts. 2. The facts hereinbefore referred to are: a) That the insolvent's assets are not of a value equal to four annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of such value has arisen from circumstances for which he cannot justly be held responsible; b) That the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency; c) That the insolvent has continued to trade after knowing himself to be insolvent; d) That the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it; e) That the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities; f) That the insolvent has brought on or contributed to his insolvency by rash or hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs; g) That the insolvent has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any suit properly brought against him; h) That the insolvent has within three months preceding the time of presentation of the petition incurred unjustifiable expense by bringing a frivolous or vexatious suit; i) That the insolvent has within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors; j) That the insolvent has concealed or removed his books or his property or any part thereof or has been guilty of any other fraud or fraudulent breach of trust. 3. The power of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently. 4. On any application for dis-

charge the report of the official assignee shall be *prima facie* evidence and the Court may presume the correctness of any statement contained therein.

Hearing of application for discharge. 40. Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner and sent one month at least before the day so appointed to each creditor who has proved, and the Court may hear the official assignee and may also hear any creditor. At the hearing the Court may put such questions to the insolvent and receive such evidence as it may think fit.

Power to annul adjudication on failure to apply for discharge. 41. If an insolvent does not appear on the day so appointed for hearing his application for discharge or if an insolvent shall not apply to the Court for an order of discharge within such time as may be prescribed, the Court, on the application of the official assignee or of a creditor or of its own motion, may annul the adjudication or make such other order as it may think fit, and the provisions of section 23 shall apply on such annulment.

Renewal of application and variation of terms of order. 42. 1. Where the Court refuses the discharge of the insolvent it may, after such time and in such circumstances as may be prescribed, permit him to renew his application. 2. Where an order of discharge is made subject to conditions and at any time after the expiration of two years from the date of the order the insolvent shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

Duty of discharged insolvent to assist in realization of property. 43. A discharged insolvent shall, notwithstanding his discharge, give such assistance as the official assignee may require in the realisation and distribution of such of his property as is vested in the official assignee, and, if he fails to do so, shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

Fraudulent settlements. 44. In either of the following cases, that is to say: 1. In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or 2. In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife); if the settlor is adjudged insolvent or compounds or arranges with his creditors, and it appears to the Court that the settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order subject to conditions or refuse to approve a composition or arrangement.

Effect of order of discharge. 45. 1. An order of discharge shall not release the insolvent from: a) Any debt due to the Crown; b) Any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or c) Any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party; or d) Any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure, 1898. 2. Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts provable in insolvency. 3. An order of discharge shall be conclusive evidence of the insolvency, and of the validity of the proceedings therein. 4. An order of discharge shall not release any person who at the date of the presentation of the petition was a partner or co-trustee with the insolvent or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

Part III. Administration of Property.

Proof of debts.

Debts provable in insolvency. 46. 1. Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable in insolvency. 2. A person having notice of the presentation of any

insolvency petition by or against the debtor shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice. 3. Save as provided by sub-sections (1) and (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable in insolvency. 4. An estimate shall be made by the official assignee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value. Provided that if in his opinion the value of the debt or liability is incapable of being fairly estimated, he shall issue a certificate to that effect and thereupon the debt or liability shall be deemed to be a debt not provable in insolvency. *Explanation.* For the purposes of this section "liability" includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied engagement, agreement or undertaking to pay, or capable of resulting in the payment of, money, or money's worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any contingency or contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

Mutual dealings and set-off. 47. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively. Provided that a person shall not be entitled under this section to claim the benefits of any set-off against the property of an insolvent in any case where he had at the time of giving credit to the insolvent notice of the presentation of any insolvency petition by or against him.

Rules as to proof of debts. 48. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule, the rules in that schedule shall be observed.

Priority of debts. 49. 1. In the distribution of the property of the insolvent there shall be paid in priority to all other debts: a) All debts due to the Crown or to any local authority; b) All salary or wages of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition, not exceeding three hundred rupees for each such clerk, and one hundred rupees for each such servant or labourer; and c) Rent due to a landlord from the insolvent: provided the amount payable under this clause shall not exceed one month's rent. 2. The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves. 3. Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them. 4. In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property. 5. Subject to the provisions of this Act, all debts proved in insolvency shall be paid rateably according to the amounts of such debts respectively and without any preference. 6. Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts proved in the insolvency.

Rent due before adjudication. 50. After an order of adjudication has been made no distress for rent due before such order shall be made upon the goods or effects of the insolvent, unless the order be annulled, but the landlord or party to whom the rent may be due shall be entitled to prove in respect of such rent.

Property available for payment of debts.

Relation of assignee's title. 51. The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to and to commence at: a) The time of the commission of the act of insolvency on which an order of adjudication is made against him, or b) If the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition. Provided that no insolvency petition or order of adjudication shall be rendered invalid by reason of any act of insolvency committed anterior to the debt of the petitioning creditor.

Description of insolvent's property divisible amongst creditors. 52. 1. The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise the following particulars, namely: a) Property held by the insolvent on trust for any other person: b) The tools (if any) of his trade and the necessary wearing apparel, bedding, cooking vessels and furniture of himself, his wife and children, to a value, inclusive of tools and apparel and other necessities as aforesaid, not exceeding three hundred rupees in the whole. 2. Subject as aforesaid, the property of the insolvent shall comprise the following particulars, namely: a) All such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by or devolve on him before his discharge; b) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge; and c) All goods being at the commencement of the insolvency in the possession, order or disposition of the insolvent, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof. Provided that things in action other than debts due or growing due to the insolvent in the course of his trade or business shall not be deemed goods within the meaning of clause (c). Provided also that the true owner of any goods which have become divisible among the creditors of the insolvent under the provisions of clause (c) may prove for the value of such goods.

Effect of insolvency on antecedent transactions.

Restriction of rights of creditor under execution. 53. 1. Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the official assignee, except in respect of assets realised in the course of the execution by sale or otherwise before the date of the order of adjudication and before he had notice of the presentation of any insolvency petition by or against the debtor. 2. Nothing in this section shall affect the rights of a secured creditor in respect of property against which a decree is executed. 3. A person who in good faith purchases the property of a debtor under a sale in execution, shall in all cases acquire a good title to it against the official assignee.

Duties of Court executing decree as to property taken in execution. 54. Where execution of a decree has issued against any property of a debtor which is saleable in execution, and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the official assignee, but the costs of the execution shall be a first charge on the property so delivered, and the official assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance of voluntary transfer. 55. Any transfer of property not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the official assignee.

Avoidance of preference in certain cases. 56. 1. Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the official assignee. 2. This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

Protection of bonâ fide transactions. 57. Subject to the foregoing provisions with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency: a) Any payment by the insolvent to any of his creditors; b) Any payment or delivery to the insolvent; c) Any transfer by the insolvent for valuable consideration; or d) Any contract or dealing by or with the insolvent for valuable consideration. Provided that any such transaction takes place before the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

Realization of property.

Possession of property by official assignee. 58. 1. The official assignee shall, as soon as may be, take possession of the deeds, books and documents of the insolvent and all other parts of his property capable of manual delivery. 2. The official assignee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent, be in the same position as if he were a receiver of the property appointed under the Code of Civil Procedure, 1908, and the Court may on his application enforce such acquisition or retention accordingly. 3. Where any part of the property of the insolvent consists of stock, shares in ships, shares or any other property transferable in the books of any company, office or person, the official assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it if he had not become insolvent. 4. Where any part of the property of the insolvent consists of things in action, such things shall be deemed to have been duly transferred to the official assignee. 5. Any treasurer or other officer, or any banker, attorney or agent of an insolvent, shall pay and deliver to the official assignee all money and securities in his possession or power, as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the insolvent or the official assignee. If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the official assignee.

Seizure of property of insolvent. 59. 1. The Court may grant a warrant to any prescribed officer of the Court or any police-officer above the rank of a constable to seize any part of the property of an insolvent in the custody or possession of the insolvent or of any other person, and with a view to such seizure to break open any house, building or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be. 2. Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any such officer as aforesaid who may execute it according to its tenor.

Appropriation of portion of pay or other income to creditors. 60. 1. Where an insolvent is an officer of the Army or Navy or of His Majesty's Royal Indian Marine Service, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the official assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the Court may direct. 2. Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication and from time to time, make such order as it thinks just for the payment to the official assignee, for distribution among the creditors of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof.

Vesting and transfer of property. 61. The property of the insolvent shall pass from official assignee to official assignee, and shall vest in the official assignee for the time being during his continuance in office, without any transfer whatever.

Disclaimer of onerous property. 62. 1. Where any part of the property of an insolvent consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee may, notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf, by writing signed by him, at any time within twelve months after the insolvent has been adjudged insolvent, disclaim the property. Provided that, where any such property has not come to the knowledge of the official assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within twelve months after he has first become aware thereof. 2. The disclaimer shall operate to determine, as from the date thereof, the rights, interests and liabilities of the insolvent and his property in or in respect of the property disclaimed, and shall also discharge the official assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property and the official assignee from liability, affect the rights or liabilities of any other person.

Disclaimer of leaseholds. 63. Subject always to such rules as may be made in this behalf, the official assignee shall not be entitled to disclaim any leasehold interest without the leave of the Court; and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the Court thinks just.

Power to call on official assignee to disclaim. 64. The official assignee shall not be entitled to disclaim any property in pursuance of section 62 in any case where an application in writing has been made to the official assignee by any person interested in the property requiring him to decide whether he will disclaim, and the official assignee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice that he disclaims the property; and, in the case of a contract, if the official assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

Power for Court to rescind contract. 65. The Court may, on the application of any person who is, as against the official assignee, entitled to the benefit or subject to the burden of a contract made with the insolvent, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the insolvency.

Power for Court to make vesting order in respect of disclaimed property. 66. 1. The Court may, on the application of any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any transfer for the purpose. Provided, always, that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the insolvent whether as under-lessee or as mortgagee except upon the terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed and any under-

lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property and if there is no person claiming under the insolvent who is willing to accept an order upon such terms, the Court shall have power to vest the insolvent's interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances and interests created therein by the insolvent. 2. The Court may, if it thinks fit, modify the terms prescribed by the foregoing proviso so as to make a person in whose behalf the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the insolvency petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

Persons injured by disclaimer may prove. 67. Any person injured by the operation of a disclaimer under the foregoing provisions shall be deemed to be a creditor of the insolvent to the amount of the injury, and may accordingly prove the same as a debt under the insolvency.

Duty and powers of official assignee as to realisation. 68. 1. Subject to the provisions of this Act, the official assignee shall, with all convenient speed, realise the property of the insolvent, and for that purpose may: a) Sell all or any part of the property of the insolvent; b) Give receipts for any money received by him; and may, by leave of the Court, do all or any of the following things, namely: c) Carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same; d) Institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent; e) Employ a legal practitioner or other agent to take any proceedings or do any business which may be sanctioned by the Court; f) Accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time or fully paid shares, debentures or debenture stock in any limited company subject to such stipulations as to security and otherwise as the Court thinks fit; g) Mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts or for the purpose of carrying on the business; h) Refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon; i) Divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold. 2. The official assignee shall account to the Court and pay over all moneys and deal with all securities in such manner as is prescribed or as the Court directs.

Distribution of property.

Declaration and distribution of dividends. 69. 1. The official assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts. 2. The first dividend (if any) shall be declared and be distributed within six months after the adjudication, unless the official assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date. 3. Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and be payable at intervals of not more than six months. 4. Before declaring a dividend, the official assignee shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the insolvent's schedule who has not proved his debt. 5. When the official assignee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and if required by any creditor a statement in the prescribed form as to the particulars of the estate.

Joint and separate properties. 70. Where one partner in a firm is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with the other partners in the firm or any of them shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

Calculation of dividends. 71. 1. In the calculation and distribution of dividends, the official assignee shall retain in his hands sufficient assets to meet: a) Debts provable in insolvency and appearing from the insolvent's statements or otherwise

to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs; b) Debts provable in insolvency the subject of claims not yet determined; c) Disputed proofs or claims; and d) The expenses necessary for the administration of the estate or otherwise. 2. Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

Right of creditor who has not proved debt before declaration of a dividend.

72. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the official assignee any dividend or dividends which he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Final dividend. 73. 1. When the official assignee has realised all the property of the insolvent, or so much thereof as can, in his opinion, be realised without needlessly protracting the proceedings in insolvency, he shall, with the leave of the Court, declare a final dividend; but, before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him but not proved that, if they do not prove their claims, to the satisfaction of the Court, within the time limited by the notice, he will proceed to make a final dividend without regard to their claims. 2. After the expiration of the time so limited, or, if the Court on application by any such claimant grants him further time for establishing his claim, then on the expiration of that further time, the property of the insolvent shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

No suit for dividend. 74. No suit for a dividend shall lie against the official assignee, but, where the official assignee refuses to pay any dividend, the Court may, on the application of the creditor who is aggrieved by such refusal, order him to pay it, and also to pay out of his own money interest thereon at such rate as may be prescribed for the time that it is withheld, and the costs of the application.

Power to allow insolvent to manage property, and allowance to insolvent for maintenance or service. 75. 1. Subject to such conditions and limitations as may be prescribed, the official assignee may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee may direct. 2. Subject as aforesaid, the Court may, from time to time, make such allowance as it thinks just to the insolvent out of his property, for the support of the insolvent and his family, or in consideration of his services, if he is engaged in winding up his estate, but any such allowance may at any time be varied or determined by the Court.

Right of insolvent to surplus. 76. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as provided by this Act and of the expenses of the proceedings taken thereunder.

Part IV. Official Assignees.

Appointment and removal of official assignees of insolvent's estate. 77. 1. The Chief Justice of each of the High Courts of Judicature at Fort William, Madras and Bombay, and the Chief Judge of the Chief Court of Lower Burma, may from time to time appoint substantively or temporarily such person as he thinks fit to the office of official assignee of insolvents' estates for each of the said Courts respectively, and may, with the concurrence of a majority of the other Judges of the Court, remove the person for the time being holding that office for any cause appearing to the Court sufficient. 2. Every official assignee shall give such security and shall be subject to such rules and shall act in such manner as may be prescribed. 3. Notwithstanding anything in sub-section (1), the persons substantively or temporarily holding the office of official assignee immediately before the commencement of this Act in the Courts for the relief of Insolvent Debtors at Calcutta, Madras and Bombay respectively under the Indian Insolvency Act, 1848, and in the Chief Court of Lower Burma under that Act as applied by the Lower Burma Courts Act, 1900, shall, without further appointment for that purpose, become the offi-

cial assignees, substantive or temporary, as the case may be, under this Act in the High Courts at Fort William, Madras and Bombay and in the Chief Court of Lower Burma, respectively.

Power to administer oath. 78. An official assignee may, for the purpose of affidavits verifying proofs, petitions or other proceedings under this Act, administer oaths.

Duties as regards the insolvent's conduct. 79. 1. The duties of an official assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate. 2. In particular it shall be the duty of the official assignee: a) To investigate the conduct of the insolvent and to report to the Court upon any application for discharge, stating whether there is reason to believe that the insolvent has committed any act which constitutes an offence under this Act or under sections 421 to 424 of the Indian Penal Code in connection with his insolvency or which would justify the Court in refusing, suspending or qualifying an order for his discharge; b) To make such other reports concerning the conduct of the insolvent as the Court may direct or as may be prescribed; and c) To take such part and give such assistance in relation to the prosecution of any fraudulent insolvent as the Court may direct or as may be prescribed.

Duty to furnish list of creditors. 80. The official assignee shall, whenever required by any creditor so to do, and on payment by the creditor of the prescribed fee, furnish and send to the creditor by post a list of the creditors showing in the list the amount of the debt due to each of the creditors.

Remuneration. 81. 1. Such remuneration shall be paid to the official assignee as may be prescribed. 2. No remuneration whatever beyond that referred to in sub-section (1) shall be received by an official assignee as such.

Misfeasance. 82. The Court shall call the official assignee to account for any misfeasance, neglect or omission which may appear in his accounts or otherwise, and may require the official assignee to make good any loss which the estate of the insolvent may have sustained by reason of the misfeasance, neglect or omission.

Name under which to sue or be sued. 83. The official assignee may sue and be sued by the name of "the official assignee of the property of . . . , an insolvent", inserting the name of the insolvent, and by that name may hold property of every description, make contracts, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Office vacated by insolvency. 84. If an order of adjudication is made against an official assignee, he shall thereby vacate the office of official assignee.

Discretionary powers and control thereof. 85. 1. Subject to the provisions of this Act and to the directions of the Court, the official assignee shall, the administration of the property of the insolvent and in the distribution thereof amongst his creditors, have regard to any resolution that may be passed by the creditors at a meeting. 2. The official assignee may, from time to time, summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution at any meeting, or the Court may direct, or whenever requested in writing to do so by one-fourth in value of the creditors who have proved. 3. The official assignee may apply to the Court for directions in relation to any particular matter arising under the insolvency. 4. Subject to the provisions of this Act, the official assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to Court. 86. If the insolvent or any of the creditors or any other person, is aggrieved by any act or decision of the official assignee, he may appeal to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

Control of Court. 87. 1. If any official assignee does not faithfully perform his duties and duly observe all the requirements imposed on him by any enactment, rules or otherwise, with respect to the performance of his duties, or if any complaint is made to the Court by any creditor in regard thereto, the Court shall enquire into the matter and take such action thereon as may be deemed expedient. 2. The Court may at any time require any official assignee to answer any enquiry made by it in relation to any insolvency in which he is engaged, and may examine him or any other person on oath concerning the insolvency. 3. The Court may also direct an investigation to be made of the books and vouchers of the official assignee.

Part V. Committee of Inspection.

Committee of Inspection. 88. The Court may, if it so thinks fit, authorise the creditors who have proved to appoint from among the creditors or holders of general proxies or general powers-of-attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the insolvent's property by the official assignee. Provided that a creditor who is appointed a member of a committee of inspection shall not be qualified to act until he has proved.

Control of committee of inspection over official assignee. 89. The committee shall have such powers of control over the proceedings of the official assignee as may be prescribed.

Part VI. Procedure.

Powers of the Court. 90. 1. In proceedings under this Act the Court shall have the like powers and follow the like procedure as it has and follows in the exercise of its ordinary original civil jurisdiction. Provided that nothing in this sub-section shall in any way limit the jurisdiction conferred on the Court under this Act. 2. Subject to the provisions of this Act and rules, the costs of and incidental to any proceeding in the Court shall be in the discretion of the Court. 3. The Court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose. 4. The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it thinks fit to impose. 5. Where by this Act or by rules the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court thinks fit to impose. 6. Subject to rules, the Court may in any matter take the whole or any part of the evidence either *vivâ voce* or by interrogatories, or upon affidavit, or by commission. 7. For the purpose of approving a composition or scheme by joint debtors the Court may, if it thinks fit, and on the report of the official assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad. 8. For the purposes of this Act the Chief Court of Lower Burma shall have all the powers to punish for contempt of Court which are possessed by the High Courts of Judicature at Fort William, Madras and Bombay respectively.

Consolidation of petitions. 91. Where two or more insolvency petitions are presented against the same debtor or against joint debtors, or where joint debtors file separate petitions, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

Power to change carriage of petition. 92. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor.

Continuance of proceedings on death of debtor. 93. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Power to stay proceedings. 94. The Court may, at any time, for sufficient reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

Power to present petition against a partner. 95. Any creditor whose debt is sufficient to entitle him to present an insolvency petition against all the partners in a firm may present a petition against any one or more partners in the firm without including the others.

Power to dismiss petition against some respondents only. 96. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

Separate insolvency petitions against partners. 97. Where an order of adjudication has been made on an insolvency petition against or by one partner in a firm, any other insolvency petition against or by a partner in the same firm shall be presented in or transferred to the Court in which the first-mentioned petition is in course of prosecution; and such Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Suits by official assignee and insolvent partners. 98. 1. Where a partner in a firm is adjudged insolvent, the Court may authorise the official assignee to continue or commence and carry on any suit or other proceeding in his name and that of the insolvent's partner: and any release by the partner of the debt or demand to which the proceeding relates shall be void. 2. Where application for authority to continue or commence any suit or other proceeding has been made under sub-section (1), notice of the application shall be given to the insolvent's partner and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

Proceedings in partnership name. 99. 1. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm. Provided that in that case the Court may, on application by any person interested, order the names of the persons who are partners in the firm, or the name of the person carrying on business under a partnership name, to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct. 2. In the case of a firm in which one partner is an infant, an adjudication order may be made against the firm other than the infant partner.

Warrant of Insolvency Courts. 100. 1. A warrant of arrest issued by the Court may be executed in the same manner and subject to the same conditions as a warrant of arrest issued under the Code of Criminal Procedure, 1898, may be executed. 2. A warrant to seize any part of the property of an insolvent, issued by the Court under section 59, sub-section (1), shall be in the form prescribed, and section 77 (2), 79, 82, 83, 84 and 102 of the said Code shall, so far as may be, apply to the execution of such warrant. 3. A search-warrant issued by the Court under section 59, sub-section (2), may be executed in the same manner and subject to the same conditions as a search-warrant for property supposed to be stolen may be executed under the said Code.

Part VII. Limitation.

Limitation of appeals. 101. The period of limitation for an appeal from any act or decision of the official assignee or from an order made by an officer of the Court empowered under section 6 shall be twenty days from the date of such act, decision or order, as the case may be.

Part VIII. Penalties.

Undischarged insolvent obtaining credit. 102. An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Punishment of insolvents for certain offences. 103. Any person adjudged insolvent who: a) Fraudulently with the intent to conceal the state of his affairs or to defeat the object of this Act, (i) Has destroyed or otherwise wilfully prevented or purposely withheld the production of any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or (ii) Has kept or caused to be kept false books, or (iii) Has made false entries in or withheld entries from or wilfully altered or falsified any book paper or writing relating to such of his affairs as are subject to investigation under this Act, or b) Fraudulently with intent to diminish the sum to be divided amongst his creditors or of giving an undue preference to any of the said creditors, (i) Has discharged or concealed any debt due to or from him, or (ii) Has made away with, charged, mortgaged or concealed any part of his property of what kind soever, shall on conviction be punishable with imprisonment for a term which may extend to two years.

Procedure on charge under section 103. 104. 1. Where the official assignee reports to the Court that in his opinion an insolvent has been guilty of any offence under section 103, or where the Court is satisfied upon the representation of any creditor that there is ground to believe that the insolvent has been guilty of any such offence, the Court may direct that a notice be served on the insolvent in the prescribed manner to show cause why a charge or charges should not be framed

against him. 2. The notice shall set forth the substance of the offence and any number of offences may be set forth in the same notice. 3. At the hearing of such notice and of any charge framed in pursuance thereof the Court shall, so far as may be, follow the procedure for the trial of warrant cases by Magistrates prescribed by Chapter XXI of the Code of Criminal Procedure, 1898, and nothing in Chapter XXIII of the said Code relating to trials before High Courts and Courts of Session shall be applicable to such trial. 4. Any number of offences under this Act may be charged at the same time.

Criminal liability after discharge or composition. 105. Where an insolvent has been guilty of any of the offences specified in section 102 or section 103, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Part IX. Small Insolvencies.

Summary administration in small cases. 106. 1. Where the Court is satisfied by affidavit or otherwise, or the official assignee reports to the Court, that the property of an insolvent is not likely to exceed in value three thousand rupees or such other less amount as may be prescribed, the Court may make an order that the insolvent's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely: a) No appeal shall lie from any order of the Court, except by leave of the Court; b) No examination of the insolvent shall be held except on the application of a creditor or the official assignee; c) The estate shall, where practicable, be distributed in a single dividend; d) Such other modifications as may be prescribed with the view of saving expense and simplifying procedure. Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the discharge of the insolvent. 2. The Court may at any time, if it thinks fit, revoke an order for the summary administration of an insolvent's estate.

Part X. Special Provisions.

Exemption of corporation, etc., from insolvency proceedings. 107. No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

Administration in insolvency of estate of person dying insolvent. 108. 1. Any creditor of a deceased debtor whose debt would have been sufficient to support an insolvency petition against the debtor, had he been alive, may present to the Court within the limits of whose ordinary original civil jurisdiction the debtor resided or carried on business for the greater part of the six months immediately prior to his decease, a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor under this Act. 2. Upon the prescribed notice being given to the legal representative of the deceased debtor, the Court may upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may upon cause shown dismiss the petition with or without costs. 3. A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of Justice for the administration of the deceased debtor's estate; but that Court may in that case, on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in insolvency, under this Act, and thereupon the last-mentioned Court may make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

Vesting of estate and mode of administration. 109. 1. Upon an order being made for the administration of a deceased debtor's estate under section 108, the property of the debtor shall vest in the official assignee of the Court, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act. 2. With the modification hereinafter mentioned, all the provisions of Part III, relating to the administration of the property of an insolvent, shall, so far as the same are applicable, apply to the case of such administration order in like manner as to an order of adjudication under this Act. 3. In the ad-

ministration of the property of the deceased debtor under an order of administration, the official assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate; and those claims shall be deemed a preferential debt under the order, and be payable in full out of the debtor's estate, in priority to all other debts. 4. If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of insolvency, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

Payments or transfer by legal representatives. 110. 1. After notice of the presentation of a petition under section 108 no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the official assignee. 2. Save as aforesaid nothing in section 108 or section 109 or this section shall invalidate any payment made or act or thing done in good faith by the legal representative or by a District Judge acting under the powers conferred on him by section 64 of the Administrator General's Act, 1874, before the date of the order for administration.

Saving of jurisdiction of Administrator General. 111. The provisions of sections 108, 109 and 110 shall not apply to any case in which probate or letters of administration to the estate of a deceased debtor have been granted to an Administrator General.

Part XI. Rules.

Rules. 112. 1. The Courts having jurisdiction under this Act may from time to time make rules for carrying into effect the objects of this Act. 2. In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate: a) The fees and percentages to be charged under this Act and the manner in which the same are to be collected and accounted for and the account to which they are to be paid; b) The investment, whether separately or collectively, of unclaimed dividends, balances and other sums appertaining to the estates of insolvent debtors whether adjudicated insolvent under this or any former enactment; and the application of the proceeds of such investment; c) The proceedings of the official assignee in taking possession of and realizing the estates of insolvent debtors; d) The remuneration of the official assignee; e) The receipts, payments and accounts of the official assignee; f) The audit of the accounts of the official assignee; g) The payment of the remuneration of the official assignee, of the costs, charges and expenses of his establishment, and of the costs of the audit of his accounts out of the proceeds of the investments in his hands; h) The payment of the costs, incurred in the prosecution of fraudulent debtors and in legal proceedings taken by the official assignee under the direction of the Court out of the proceeds aforesaid; i) The payment of any civil liability incurred by an official assignee acting under the order or direction of the Court; j) The proceedings to be taken in connection with proposals for composition and schemes of arrangement with the creditors of insolvent debtors; k) The intervention of the official assignee at the hearing of applications and matters relating to insolvent debtors and their estates; l) The examination by the official assignee of the books and papers of account of undischarged insolvent debtors; m) The service of notices in proceedings under this Act; n) The appointment, meetings and procedure of committees of inspection; o) The conduct of proceedings under this Act in the name of a firm; p) The forms to be used in proceedings under this Act; q) The procedure to be followed in the case of estates to be administered in a summary manner; r) The procedure to be followed in the case of estates of deceased persons to be administered under this Act.

Sanction to rules. 113. Rules made under the provisions of this Part shall be subject, in the case of the High Court of Judicature at Fort William in Bengal, to the previous sanction of the Governor-General in Council, and, in the case of any other Court, of the Local Government.

Publication of rules. 114. Rules so made and sanctioned shall be published in the *Gazette of India* or in the local official Gazette, as the case may be, and shall thereupon have the same force and effect with regard to proceedings under this Act in the Court which made them as if they had been enacted in this Act.

Part XII. Supplemental.

Exemption from duty of transfers, etc., under this Act. 115. 1. Every transfer, mortgage, assignment, power-of-attorney, proxy paper, certificate, affidavit, bond or other proceedings, instrument or writing whatsoever before or under any order of the Court, and any copy thereof shall be exempt from payment of any stamp or other duty whatsoever. 2. No stamp duty or fee shall be chargeable for any application made by the official assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application.

The Gazette to be evidence. 116. 1. A copy of the official Gazette containing any notice inserted in pursuance of this Act shall be evidence of the facts stated in the notice. 2. A copy of the official Gazette containing any notice of an order of adjudication shall be conclusive evidence of the order having been duly made, and of its date.

Swearing of affidavits. 117. Any affidavit may be used in a Court having jurisdiction under this Act if it is sworn: a) In British India, before (i) Any Court or Magistrate, or (ii) Any officer or other person appointed to administer oaths under the Code of Civil Procedure, 1908; b) In England, before any person authorised to administer oaths in His Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorised in writing in that behalf by the Judge of the Court or before a Justice of the Peace for the county or place where it is sworn; c) In Scotland or in Ireland, before a Judge Ordinary, Magistrate or Justice of the Peace; and, d) In any other place, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid, by a British Minister or British Consul or British Political Agent or by a notary public).

Formal defect not to invalidate proceedings. 118. 1. No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court. 2. No defect or irregularity in the appointment of an official assignee or member of a committee of inspection shall vitiate any act done by him in good faith.

Application of Trustee Act to insolvency of trustee. 119. Where an insolvent is a trustee within the Indian Trustee Act, 1866, section 35 of that Act shall have effect so as to authorise the appointment of a new trustee in substitution for the insolvent (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

Certain provisions to bind the Crown. 120. Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown.

Saving for existing rights of audience. 121. Nothing in this Act, or in any transfer of jurisdiction effected thereby, shall take away or affect any right of audience that any person may have had immediately before the commencement of this Act, or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Courts for the Relief of Insolvent Debtors.

Lapse and credit to Government of unclaimed dividends. 122. Where the official assignee has under his control any dividend which has remained unclaimed for fifteen years from the date of declaration or such less period as may be prescribed, he shall pay the same to the account and credit of the Government of India, unless the Court otherwise directs.

Claims to moneys credited to Government under section 122. 123. Any person claiming to be entitled to any moneys paid to the account and credit of the Government of India under section 122, may apply to the Court for an order for payment to him of the same; and the Court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due. Provided that, before making an order for the payment of a sum which has been carried to the account and credit of the Government of India, the Court shall cause a notice to be served on such officer as the Governor General in Council may appoint in this behalf,

calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.

Access to insolvent's books. 124. 1. No person shall, as against the official assignee, be entitled to withhold possession of the books of accounts belonging to the insolvent or to set up any lien thereon. 2. Any creditor of the insolvent may, subject to the control of the Court, and on payment of such fee, if any, as may be prescribed, inspect at all reasonable times, personally or by agent, any such books in the possession of the official assignee.

Fees and percentages. 125. Such fees and percentages shall be charged for and in respect of proceedings under this Act as may be prescribed.

Courts to be auxiliary to each other. 126. All Courts having jurisdiction under this Act shall make such orders and do such things as may be necessary to give effect to section 118 of the Bankruptcy Act, 1883, and to section 50 of the Provincial Insolvency Act, 1907.

Repeal of enactments. 127. 1. The enactments mentioned in the third schedule are hereby repealed to the extent specified in the fourth column thereof. 2. Notwithstanding the repeal effected by this Act, the proceedings under an insolvency petition under the Indian Insolvency Act, 1848, pending at the commencement of this Act shall, except so far as any provision of this Act is expressly applied to pending proceedings, continue and all the provisions of the said Indian Insolvency Act shall, except as aforesaid, apply thereto, as if this Act had not been passed.

The First Schedule.

(See section 26.)

Meetings of Creditors.

Meetings of creditors. 1. The official assignee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court or by the creditors by resolution at any meeting or whenever requested in writing by one-fourth in value of the creditors who have proved.

Summoning of meetings. 2. Meetings shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the insolvent's schedule, or such other address as may be known to the official assignee.

Notice of meetings. 3. The notice of any meeting shall be sent off not less than seven days before the day appointed for the meeting and may be delivered personally or sent by prepaid post letter, as may be convenient. The official assignee may, if he thinks fit, also publish the time and place of any meeting in any local newspaper or in the local official Gazette.

Duty of insolvent to attend if required. 4. It shall be the duty of the insolvent to attend any meeting which the official assignee may, by notice, require him to attend, and any adjournment thereof. Such notice shall be either delivered to him personally or sent to him at his address by post at least three days before the date fixed for the meeting.

Proceedings not to be avoided for non-receipt of notice. 5. The proceedings held and resolutions passed at any meeting shall, unless the Court otherwise orders, be valid, notwithstanding that any creditor has not received the notice sent to him.

Proof of issue of notice. 6. A certificate of the official assignee that the notice of any meeting has been duly given, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Costs of meeting. 7. Where on the request of creditors the official assignee summons a meeting, there shall be deposited with the written request the sum of five rupees for every twenty creditors for the cost of summoning the meeting, including all disbursements. Provided that the official assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover the costs and expenses of the meeting.

Chairman. 8. The official assignee shall be the chairman of any meeting.

Right to vote. 9. A creditor shall not be entitled to vote at a meeting unless he has duly proved a debt provable in insolvency to be due to him from the insolvent, and the proof has been duly lodged one clear day before the time appointed for the meeting.

No vote in respect of certain debts. 10. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

Secured creditor. 11. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

Proof in respect of negotiable instruments. 12. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the insolvent is liable, such bill of exchange, note, instrument or security must, subject to any special order of the Court made to the contrary, be produced to the official assignee before the proof can be admitted for voting.

Power to require creditor to give up security. 13. It shall be competent to the official assignee, within twenty-eight days after a proof estimating the value of a security has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so estimated.

Proof by partner. 14. If one partner in a firm is adjudged insolvent, any creditor to whom that partner is indebted jointly with the other partners in the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

Power of official assignee to admit or reject proof. 15. The official assignee shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

Proxy. 16. A creditor may vote either in person or by proxy.

Instrument of proxy. 17. Every instrument of proxy shall be in the prescribed form and shall be issued by the official assignee.

General proxy. 18. A creditor may give a general proxy to his attorney or to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

Proxy to be deposited one day before date of meeting. 19. A proxy shall not be used unless it is deposited with the official assignee one clear day before the time appointed for the meeting at which it is to be used.

Official assignee as proxy. 20. A creditor may appoint the official assignee to act as his proxy.

Adjournment of meeting. 21. The official assignee may adjourn the meeting from time to time and from place to place and no notice of the adjournment shall be necessary.

Minute of proceedings. 22. The official assignee shall draw up a minute of the proceedings at the meeting and shall sign the same.

The Second Schedule.

(See section 43.)

Proof of Debts. Proofs in ordinary cases.

Time for lodging proof. 1. Every creditor shall lodge the proof of his debt as soon as may be after the making of an order of adjudication.

Mode of lodging proof. 2. A proof may be lodged by delivering or sending by post in a registered letter to the official assignee an affidavit verifying the debt.

Authority to make affidavit. 3. The affidavit may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

Contents of affidavit. 4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any,

by which the same can be substantiated. The official assignee may at any time call for the production of the vouchers.

Affidavit to state if creditor holds security. 5. The affidavit shall state whether the creditor is or is not a secured creditor.

Cost of proving debts. 6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

Right to see and examine proof. 7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times.

Deduction to be made from proof. 8. A creditor in lodging his proofs shall deduct from his debt all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by secured creditors.

Proof where security realized. 9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

Proof where security is surrendered. 10. If a secured creditor surrenders his security to the official assignee for the general benefit of the creditors, he may prove for his whole debt.

Proof in other cases. 11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

Valuation of security. 12. 1. Where a security is so valued the official assignee may at any time redeem it on payment to the creditor of the assessed value. 2. If the official assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee, or as, in default of agreement, the Court may direct. If the sale is by public auction, the creditor, or the official assignee on behalf of the estate, may bid or purchase. Provided that the creditor may at any time, by notice in writing, require the official assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the official assignee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the official assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

Amendment of valuation. 13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the Court, that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the official assignee shall allow the amendment without application to the Court.

Refund of excess received. 14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

Amendment where security subsequently realized. 15. If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

Exclusion from sharing in dividend. 16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

Limit of receipt. 17. Subject to the provisions of rule 12, a creditor shall in no case receive more than sixteen annas in the rupee and interest as provided by this Act.

Taking Accounts of Property Mortgaged, and of the Sale thereof.

Inquiry into mortgage, etc. 18. Upon application by any person claiming to be a mortgagee of any part of the insolvent's real or leasehold estate, and whether such mortgage is by deed or otherwise, and whether the same is of a legal or equitable nature, or upon application by the official assignee with the consent of such person claiming to be a mortgagee as aforesaid, the Court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances; and if it is found that such person is such mortgagee, and if no sufficient objection appears to the title of such persons to the sum claimed by him under such mortgage, the Court shall direct such accounts and injuries to be taken as may be necessary for ascertaining the principal, interest and costs due upon such mortgage, and of the rents and profits, or dividends, interest or other proceeds received by such person or by any other person by his order or for his use in case he has been in possession of the property over which the mortgage extends, or any part thereof, and the Court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the Court thinks fit, when and where and by whom and in what way the said premises or property, or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the official assignee (unless it is otherwise ordered) shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

Conveyance. 19. All proper parties shall join in the conveyance to the purchaser, as the Court directs.

Proceeds of sale. 20. The moneys to arise from such sale shall be applied, in the first place, in payment of the costs, charges and expenses of and occasioned by the application to the Court, and of such sale and the commission (if any) of the official assignee, and in the next place in payment and satisfaction, so far as the same extend, of what shall be found due to such mortgagee, for principal, interest and costs, and the surplus of the said moneys (if any) shall then be paid to the official assignee. But if the moneys to arise from such sale are insufficient to pay and satisfy what is so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend then already declared.

Proceedings on inquiry. 21. For the better taking of such inquiries and accounts, and making a title to the purchaser all parties may be examined by the Court upon interrogatories or otherwise as the Court thinks fit, and shall produce before the Court upon oath all deeds, papers, books and writings in their respective custody or power relating to the estate or effects of the insolvent as the Court directs.

Periodical payments.

Periodical payments. 22. When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

Interest. 23. 1. On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum: a) If the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or, b) If the debt or sum is payable otherwise from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication. 2. Where a debt which has been proved in insolvency includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a

rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Debt payable at a future time.

Debt payable in future. 24. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or rejection of proofs.

Admission or rejection of proof. 25. The official assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

Court may expunge proof improperly received. 26. If the official assignee thinks that a proof has been improperly admitted, the Court may, on the application of the official assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

Power for Court to expunge or reduce proof. 27. The Court may also expunge or reduce a proof upon the application of a creditor if the official assignee declines to interfere in the matter or, in the case of a composition or scheme, upon the application of the insolvent.

The Third Schedule.

(See section 127.)

Enactments repealed.

| Year. | No. | Short title. | Extent of repeal. |
|---|----------------------------|--|--|
| <i>I. Statute.</i> | | | |
| 1848 | 11 and 12 Vict., c. 21. | The Indian Insolvency Act, 1848. | So much as has not been repealed. |
| <i>II. Acts of the Governor-General in Council.</i> | | | |
| 1841 | XXVII | The Insolvent Estates (Unclaimed Dividends) Act, 1841. | So much as has not been repealed. |
| 1898 | X | The Indian Insolvency Rules Act, 1898. | Sections 2 and 3. |
| 1900 | VI | The Lower Burma Courts Act. | Section 8, sub-section (1), clause d, and sub-section (2); and in section 17, in sub-section (1) the words "an official assignee", and in sub-section (2) and (4) the words "official assignee". |
| 1908 | V | The Code of Civil Procedure, 1908. | Section 120, sub-section (2). |

Act No. X of 1898.

Passed by the Governor General of India in Council. (Received the assent of the Governor General on the 2nd September, 1898.)

An Act to make provision for certain matters connected with Insolvency.

Whereas doubts have arisen as to the extent of the power to make rules conferred by sections 15 and 76 of the Indian Insolvency Act, 1848, and whereas it is expedient to remove those doubts and to confirm certain rules which were made by the High Court of Judicature at Bombay on the thirty-first day of July, 1878; It is hereby enacted as follows:

Short title and commencement. 1. 1. This Act may be called the Indian Insolvency Rules Act, 1898; and 2. It shall come into force at once.

Official assignee's allowance for pension. 4. The Chief Justice of the said Court may, with the previous sanction of the Governor General in Council, pay to the present official assignee, out of the interest on the Unclaimed Dividend Account, such sum by way of pension on retirement, or bonus in lieu thereof, as may be reasonable and proper having regard to the length, nature and conditions of his service

Special Provisions under Act 17 of 1879 (Agriculturists' Relief Act) for Insolvent Agriculturists.

Subordinate Judges to have jurisdiction in agriculturists cases. 24. Every Subordinate Judge shall have the powers conferred by Sections 344 to 359 (both inclusive) of the Code of the Civil Procedure, as modified by the provisions next hereinafter contained, for the purpose of dealing with applications under the Code of Civil Procedure or under this Act, to have agriculturists residing within the local limits of his ordinary jurisdiction declared insolvent, and proceedings taken under orders passed under the second clause of Section nineteen; and except as provided in Chapter VII of this Act, no such application or proceeding shall be dealt with in any other Court.

Agriculturists may apply for adjudication in cases not provided for by Court. 25. Any agriculturist whose debts (if any) amount to fifty Rupees or upwards, may apply to any Subordinate Judge within the local limits of whose ordinary jurisdiction he resides to be declared an insolvent; though he has not been arrested or imprisoned, and though no order of attachment has been issued against his property, in execution of a decree.

Modification of Section 351 of the Code. 26. Notwithstanding anything contained in Section 351 of the Code of Civil Procedure, the Court shall declare an agriculturist an insolvent if it is satisfied that he is in insolvent circumstances, and that the application to have him declared an insolvent has been properly made under Section 344 of the said Code or Section twenty-five of this Act.

Receiver. 27. No person other than the Nazir of the Court shall be appointed as Receiver, and no receiver shall be entitled to commission.

Proof of Debts. 28. In determining, under Section 352 of the said Code, the amount of any claim of the nature referred to in Section 12 of this Act due by an insolvent agriculturist, the Court shall proceed in the manner prescribed by Sections twelve to fifteen of this Act, both inclusive.

Immovable property not to vest in receiver but may be managed for the benefit of creditors. 29. No immovable property of the insolvent shall vest in the receiver, but the Court may direct the Collector to take into his possession, for any period not exceeding seven years from the date on which the receiver has been appointed, any immovable property to the possession of which the insolvent is entitled, and, which in the opinion of the Collector, is not required for the support of the insolvent and the members of his family dependent on him, and, subject to any rules the Local Government may from time to time make in this behalf, to manage the same for the benefit of the creditors, by letting it on lease or otherwise: Provided that if the insolvent or his representative in interest at any time pays into Court the balance of the scheduled debts then unpaid, he shall, subject to any rights created in favour of other persons by the Collector, be entitled to recover possession of such property. A Collector managing property under this Section shall during the management have all the powers which the owner might as such have legally exercised, and shall receive and recover all rents and profits of such property, and for the purpose of recovering the land-revenue due to Government except the powers mentioned in the Bombay Land-Revenue Code, 1879, Section 150, Clauses b), d) and e). Nothing in this Section shall authorise the Courts to direct the Collector to take into his possession any houses or other buildings belonging to and occupied by an agriculturist.

Second Debts. 30. When any scheduled debt is secured by a mortgage of any portion of the insolvent's property, the Court may direct the Collector, if he can obtain a premium equal to the amount of such debt by letting such property for a term not exceeding twenty years, to let such property, and if he cannot so obtain such premium to sell such property under § 325 of the Code of Civil Procedure.

Insolvent incompetent to sell, etc., property dealt with under §§ 29 and 30. 31. So long as any management under Section twenty-nine or letting under thirty continues, the insolvent and his representatives in interest shall be incompetent to mortgage, charge, lease or alienate the property managed or let or any part thereof.

Scheduled Debts discharged. 32. When the balance available for distribution among the scheduled creditors under Section 356 of the said Code has been distributed, the claims of such creditors shall be deemed to have been discharged, except as regard the right to share in the profits of any property managed by the Collector under Section twenty-nine, or let by him under Section thirty.

Appeals barred. 33. No appeal shall lie from any order passed under this chapter except orders passed in exercise of the power conferred by Section 359 of the Code of Civil Procedure.

Special Procedure provided by the Code of Civil Procedure 1908 (Act V of 1908) Orders XXIX and XXX of First Schedule.

Order XXIX. Suits by or against Corporations.

Subscription and verification of pleading. 1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Service on corporation. 2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served: a) On the secretary, or on any director, or other principal officer of the corporation, or b) By leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

Power to require personal attendance of officer of corporation. 3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

Order XXX. Suits by or against Firms and Persons carrying on business in names other than their own.

Suing of partners in name of firm. 1. 1. Any two or more persons claiming or being liable as partners and carrying on business in British India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct. 2. Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

Disclosure of partners' names. 2. 1. Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted. 2. Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct. 3. Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint: Provided that all the proceedings shall nevertheless continue in the name of the firm.

Service. 3. Where persons are sued as partners in the name of their firm, the summons shall be served either: a) Upon any one or more of the partners, or b) At the principal place at which the partnership business is carried on within British India upon any person having, at the time of service, the control or management of the partnership business there, as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without British India: Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within British India whom it is sought to make liable.

Right of suit on death of partner. 4. 1. Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit. 2. Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have: a) To apply to be made a party to the suit, or b) To enforce any claim against the survivor or survivors.

Notice in what capacity served. 5. Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Appearance of partners. 6. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

No appearance except by partners. 7. Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

Appearance under protest. 8. Any person served with summons as a partner under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

Suits between co-partners. 9. This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

Suit against person carrying on business in name other than his own. 10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

The Indian Limitation Act, 1908.

Act No. IX of 1908.

Passed by the Governor General of India in Council. (Received the assent of the Governor General on the 7th August, 1908.)

An Act to consolidate and amend the law for the Limitation of Suits, and for other purposes.

Whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:

Part I. Preliminary.

Short title, extent and commencement. 1. This Act may be called the Indian Limitation Act, 1908. 2. It extends to the whole of British India; and 3. This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January 1909.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context: 1. "Applicant" includes any person from or through whom an applicant derives his right to apply. 2. "Bill of exchange" includes a hundi and a cheque. 3. "Bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be. 4. "Defendant" includes any person from or through whom a defendant derives his liability to be sued. 5. "Easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon, the land of another. 6. "Foreign country" means any country other than British India. 7. "Good faith": nothing shall be deemed to be done in good faith which is not done with due care and attention. 8. "Plaintiff" includes any person from or through whom a plaintiff derives his right to sue. 9. "Promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight. 10. "Suit" does not include an appeal or an application, and 11. "Trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrongdoer in possession without title.

Part II. Limitation of Suits, Appeals and Applications.

Dismissal of suits, etc., instituted, etc., after period of limitation. 3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence. *Explanation.* A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Where Court is closed when period expires. 4. Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

Extension of period in certain cases. 5. Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by any enactment or rule for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. *Explanation.* The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

Legal disability. 6. 1. Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule. 2. Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed. 3. Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

4. Where such representative is at the date of the death affected by any such disability, the rules contained in subsections 1. and 2. shall apply.

Illustrations.

a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

b) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

Disability of one of several plaintiffs or applicants. 7. Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all: but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Illustrations.

a) A incurs a debt to a firm of which B, C and D are partners. B is insane, and C. is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

Special exceptions. 8. Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.

a) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.

c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

Continuous running of time. 9. Where once time has begun to run, no subsequent disability or inability to sue stops it: Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

Suits against express trustees and their representatives. 10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

Suits on foreign contracts. 11. 1. Suits instituted in British India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act. 2. No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

Part III. Computation of Period of Limitation.

Exclusion of time in legal proceedings. 12. 1. In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. 2. In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded. 3. Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded. 4. In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from British India and certain other territories. 13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India and from the territories beyond British India under the administration of the Government shall be excluded.

Exclusion of time of proceeding bonâ fide in Court without jurisdiction. 14. 1. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it. 2. In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it. *Explanation I.* In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted. *Explanation II.* For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding. *Explanation III.* For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

Exclusion of time during which proceeding are suspended. 15. 1. In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded. 2. In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

Exclusion of time during which proceedings to set aside execution sale are pending. 16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

Effect of death before right to sue accrues. 17. 1. Where a person who would if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application. 2. Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application. 3. Nothing in sub-sections 1. and 2. applies to suits to enforce right of pre-emption or to suits for the possession of immovable property or of an hereditary office.

Effect of fraud. 18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right

or of the title on which it is founded; Or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application: a) Against the person guilty of the fraud or accessory thereto, or b) Against any person claiming through him otherwise than in good faith and for a valuable consideration; Shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Effect of acknowledgment in writing. 19. 1. Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. 2. Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.

Explanation I. For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right. *Explanation II.* For the purposes of this section, "signed" means signed either personally or by an agent duly authorized in this behalf. *Explanation III.* For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

Effect of payment of interest as such or of part payment of principal. Effect of receipt of produce of mortgaged land. 20. 1. Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf; Or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf; a fresh period of limitation shall be computed from the time when the payment was made. Provided that, in the case of part payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same. 2. Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section 1. *Explanation.* Debt includes money payable under a decree or order of Court.

Agent of person under disability. Acknowledgment or payment by one of several joint contractors, etc. 21. 1. The expression "agent duly authorized in this behalf," in section 19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment. 2. Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

Effect of substituting or adding new plaintiff or defendant. 22. 1. Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party. 2. Nothing in sub-section 1, shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Continuing breaches and wrongs. 23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Suit for compensation for act not actionable without special damage. 24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustration.

A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

Computation of time mentioned in instruments. 25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

b) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

Part IV. Acquisition of Ownership by Possession.

Acquisition of right to easements. 26. 1. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years; And where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years; The right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible. Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested. 2. Where the property over which a right is claimed under sub-section (1) belongs to Government, that sub-section shall be read as if for the words "twenty years" the words "sixty years" were substituted. *Explanation.* Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Illustrations.

a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January 1890 to 1st January 1910. The plaintiff is entitled to judgment.

b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

Exclusion in favour of reversioner of servient tenement. 27. Where any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Extinguishment of right to property. 28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Part V. Savings and Repeals.

Savings. 29. 1. Nothing in this Act shall: a) Affect the Indian Contract Act, 1872, section 25; b) Affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India. 2. Nothing in this Act shall apply to suits under the Indian Divorce Act. 3. Sections 26 and 27 and the definition of "easement" in section 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882, may for the time being extend.

Provision for suits for which the period prescribed is shorter than that prescribed by the Indian Limitation Act, 1877. 30. Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the Indian Limitation Act, 1877, may be instituted within the period of two years next after the passing of this Act, or within the period prescribed for such suit by the Indian Limitation Act, 1877, whichever period expires first.

Provision for suits by certain mortgagees in territories mentioned in the second schedule. 31. 1. Notwithstanding anything contained in this Act or in the Indian Limitation Act, 1877, in the territories mentioned in the second schedule a suit for foreclosure or a suit for sale by a mortgagee may be instituted within two years from the date of the passing of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first; and no such suit in the said territories instituted within the said period of sixty years and pending at the date of the passing of this Act, either in a Court of first instance or of appeal, shall be dismissed on the ground that a twelve years' rule of limitation is applicable. 2. Where in the aforesaid territories the claim of a mortgagee for foreclosure or for sale has been wholly or in part dismissed or withdrawn after the twenty-second day of July 1907 and before the passing of this Act, either in a Court of first instance or of appeal on the ground that a twelve years' rule of limitation applied to such claim, the case may be restored on an application in writing to the Court by which the claim was dismissed or in which it was withdrawn, provided the application is made within six months from the date of the passing of this Act: and on such restoration, the provisions of sub-section (1) shall apply.

Repeals. 32. The enactments mentioned in the third schedule are repealed to the extent specified in the fourth column thereof.

*Schedules.**The First Schedule.**(See section 3.)***First Division: Suits.**

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|--|------------------------------|---|
| | <i>Part I. Thirty days.</i> | |
| 1. To contest an award of the Board of Revenue under the Waste Lands (Claims) Act, 1863. | Thirty days. | When notice of the award is delivered to the plaintiff. |
| | <i>Part II. Ninety days.</i> | |
| 2. For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India. | Ninety days. | When the act or omission takes place. |
| | <i>Part III. Six months.</i> | |
| 3. Under the Specific Relief Act, 1877, section 9, to recover possession of immovable property. | Six months. | When the dispossession occurs. |
| 4. Under the Employers and Workmen (Disputes) Act, 1860, section 1. | Ditto. | When the wages, hire or price of work claimed accrue or accrues due. |
| 5. Under the summary procedure referred to in section 128 (2) (f) of the Code of Civil Procedure, 1908. | Ditto. | When the debt or liquidated demand becomes payable or when the property becomes recoverable. |
| | <i>Part IV. One year.</i> | |
| 6. Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture. | One year. | When the penalty or forfeiture is incurred. |
| 7. For the wages of a household servant, artisan or labourer not provided for by this schedule, article 4. | Ditto. | When the wages accrue due. |
| 8. For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house. | Ditto. | When the food or drink is delivered. |
| 9. For the price of lodging. | Ditto. | When the price becomes payable. |
| 10. To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract. | Ditto. | When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered. |
| 11. By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order: 1) Order under the Code of Civil Procedure, 1908, on a claim preferred to, or an objection made to the attachment of, property attached in execution of a decree; — | Ditto. | The date of the order. |

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|---|-----------------------|--|
| 2) Order under section 28 of the Presidency Small Cause Courts Act, 1882. | | |
| 11 A. By a person against whom an order has been made under the Code of Civil Procedure, 1908, upon an application by the holder of a decree for the possession of immoveable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order. | One year. | The date of the order. |
| 12. To set aside any of the following sales: a) Sale in execution of a decree of a Civil Court; b) Sale in pursuance of a decree or order of a Collector or other officer of revenue; c) Sale for arrears of Government revenue, or for any demand recoverable as such arrears; d) Sale of a patni taluq sold for current arrears of rent. | Ditto. | When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought. |
| <i>Explanation.</i> In this article "patni" includes any intermediate tenure saleable for current arrears of rent. | | |
| 13. To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit. | Ditto. | The date of the final decision or order in the case by a Court competent to determine it finally. |
| 14. To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for. | Ditto. | The date of the act or order. |
| 15. Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue-authorities for arrears of Government revenue. | Ditto. | When the attachment, lease or transfer is made. |
| 16. Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears. | Ditto. | When the payment is made. |
| 17. Against Government for compensation for land acquired for public purposes. | Ditto. | The date of determining the amount of the compensation. |

| Description of suit. | Period of limitation. | Time from which period begins to run. |
|---|-----------------------|--|
| 18. Like suit for compensation when the acquisition is not completed. | One year. | The date of the refusal to complete. |
| 19. For compensation for false imprisonment. | Ditto. | When the imprisonment ends. |
| 20. By executors, administrators or representatives under the Legal Representatives' Suits Act, 1855. | Ditto. | The date of the death of the person wronged. |
| 21. By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855. | Ditto. | The date of the death of the person killed. |
| 22. For compensation for any other injury to the person. | Ditto. | When the injury is committed. |
| 23. For compensation for a malicious prosecution. | Ditto. | When the plaintiff is acquitted, or the prosecution is otherwise terminated. |
| 24. For compensation for libel. | Ditto. | When the libel is published. |
| 25. For compensation for slander. | Ditto. | When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results. |
| 26. For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter. | Ditto. | When the loss occurs. |
| 27. For compensation for inducing a person to break a contract with the plaintiff. | Ditto. | The date of the breach. |
| 28. For compensation for an illegal, irregular or excessive distress. | Ditto. | The date of the distress. |
| 29. For compensation for wrongful seizure of moveable property under legal process. | Ditto. | The date of the seizure. |
| 30. Against a carrier for compensation for losing or injuring goods. | Ditto. | When the loss or injury occurs. |
| 31. Against a carrier for compensation for non-delivery of, or delay in delivering, goods. | Ditto. | When the goods ought to be delivered. |
| <i>Part V. Two years.</i> | | |
| 32. Against one who, having a right to use property for specific purposes, perverts it to other purposes. | Two years. | When the perversion first becomes known to the person injured thereby. |
| 33. Under the Legal Representatives' Suits Act, 1855, against an executor. | Ditto. | When the wrong complained of is done. |
| 34. Under the same Act against an administrator. | Ditto. | Ditto. |
| 35. Under the same Act against any other representative. | Ditto. | Ditto. |
| 36. For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for. | Ditto. | When the malfeasance, misfeasance or nonfeasance takes place. |
| <i>Part VI. Three years.</i> | | |
| 37. For compensation for obstructing a way or a water-course. | Three years. | The date of the obstruction. |

| Description of suit. | Period of limitation. | Time from which period begins to run. |
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| 38. For compensation for diverting a watercourse. | Three years. | The date of the diversion. |
| 39. For compensation for trespass upon immoveable property. | Ditto. | The date of the trespass. |
| 40. For compensation for infringing copyright or any other exclusive privilege. | Ditto. | The date of the infringement. |
| 41. To restrain waste. | Ditto. | When the waste begins. |
| 42. For compensation for injury caused by an injunction wrongfully obtained. | Ditto. | When the injunction ceases. |
| 43. Under the Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets. | Ditto. | The date of the payment or distribution. |
| 44. By a ward who has attained majority, to set aside a transfer of property by his guardian. | Ditto. | When the ward attains majority. |
| 45. To contest an award under any of the following Regulations of the Bengal Code: The Bengal Land - revenue Settlement Regulation, 1822. The Bengal Land - revenue Settlement Regulation, 1825. The Bengal Land - revenue (Settlement and Deputy Collectors) Regulation. 1833. | Ditto. | The date of the final award or order in the case. |
| 46. By a party bound by such award to recover any property comprised therein. | Ditto. | The date of the final award or order in the case. |
| 47. By any person bound by an order respecting the possession of immoveable property made under the Code of Criminal Procedure, 1898, or the Mamlatdars' Courts Act, 1906, or by any one claiming under such person, to recover the property comprised in such order. | Ditto. | The date of the final order in the case. |
| 48. For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same. | Ditto. | When the person having the right to the possession of the property first learns in whose possession it is. |
| 49. For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same. | Ditto. | When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful. |
| 50. For the hire of animals, vehicles, boats or household furniture. | Ditto. | When the hire becomes payable. |
| 51. For the balance of money advanced in payment of goods to be delivered. | Ditto. | When the goods ought to be delivered. |

| Description of suit. | Period of limitation. | Time from which period begins to run. |
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| 52. For the price of goods sold and delivered, where no fixed period of credit is agreed upon. | Three years. | The date of the delivery of the goods. |
| 53. For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit. | Ditto. | When the period of credit expires. |
| 54. For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given. | Ditto. | When the period of the proposed bill elapses. |
| 55. For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon. | Ditto. | The date of the sale. |
| 56. For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment. | Ditto. | When the work is done. |
| 57. For money payable for money lent. | Ditto. | When the loan is made. |
| 58. Like suit when the lender has given a cheque for the money. | Ditto. | When the cheque is paid. |
| 59. For money lent under an agreement that it shall be payable on demand. | Ditto. | When the loan is made. |
| 60. For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable. | Ditto. | When the demand is made. |
| 61. For money payable to the plaintiff for money paid for the defendant. | Ditto. | When the money is paid. |
| 62. For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. | Ditto. | When the money is received. |
| 63. For money payable for interest upon money due from the defendant to the plaintiff. | Ditto. | When the interest becomes due. |
| 64. For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated to the plaintiff on accounts stated between them. | Ditto. | When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives. |
| 65. For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency. | Ditto. | When the time specified arrives or the contingency happens. |
| 66. On a single bond, where a day is specified for payment. | Ditto. | The day so specified. |
| 67. On a single bond, where no such day is specified. | Ditto. | The date of executing the bond. |
| 68. On a bond subject to a condition. | Ditto. | When the condition is broken. |

| Description of suit. | Period of limitation. | Time from which period begins to run. |
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| 69. On a bill of exchange or promissory note payable at a fixed time after date. | Three years. | When the bill or note falls due. |
| 70. On a bill of exchange payable at sight, or after sight, but not at a fixed time. | Ditto. | When the bill is presented. |
| 71. On a bill of exchange accepted payable at a particular place. | Ditto. | When the bill is presented at that place. |
| 72. On a bill of exchange or promissory note payable at a fixed time after sight or after demand. | Ditto. | When the fixed time expires. |
| 73. On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue. | Ditto. | The date of the bill or note. |
| 74. On a promissory note or bond payable by instalments. | Ditto. | The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment. |
| 75. On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due. | Ditto. | When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver. |
| 76. On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen. | Ditto. | The date of the delivery to the payee. |
| 77. On a dishonoured foreign bill, where protest has been made and notice given. | Ditto. | When the notice is given. |
| 78. By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance. | Ditto. | The date of the refusal to accept. |
| 79. By the acceptor of an accommodation-bill against the drawer. | Ditto. | When the acceptor pays the amount of the bill. |
| 80. Suit on a bill of exchange, promissory note or bond not herein expressly provided for. | Ditto. | When the bill, note or bond becomes payable. |
| 81. By a surety against the principal debtor. | Ditto. | When the surety pays the creditor. |
| 82. By a surety against a co-surety. | Ditto. | When the surety pays anything in excess of his own share. |
| 83. Upon any other contract to indemnify. | Ditto. | When the plaintiff is actually damnified. |
| 84. By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid. | Ditto. | The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance. |
| 85. For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties. | Ditto. | The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account. |
| 86. On a policy of insurance, when the sum assured is pay- | Ditto. | When proof of the death or loss is given or received to or by the |

| Description of suit. | Period of limitation. | Time from which period begins to run. |
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| able immediately after proof of the death or loss has been given to or received by the insurers. | | insurer, whether by or from the plaintiff, or any other person. |
| 87. By the assured to recover premia paid under a policy voidable at the election of the insurers. | Three years. | When the insurers elect to avoid the policy. |
| 88. Against a factor for an account. | Ditto. | When the account is, during the continuance of the agency, demanded and refused, or where no such demand is made, when the agency terminates. |
| 89. By a principal against his agent for moveable property received by the latter and not accounted for. | Ditto. | Ditto. |
| 90. Other suits by principals against agents for neglect or misconduct. | Ditto. | When the neglect or misconduct becomes known to the plaintiff. |
| 91. To cancel or set aside an instrument not otherwise provided for. | Ditto. | When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him. |
| 92. To declare the forgery of an instrument issued or registered. | Ditto. | When the issue or registration becomes known to the plaintiff. |
| 93. To declare the forgery of an instrument attempted to be enforced against the plaintiff. | Ditto. | The date of the attempt. |
| 94. For property which the plaintiff has conveyed while insane. | Ditto. | When the plaintiff is restored to sanity, and has knowledge of the conveyance. |
| 95. To set aside a decree obtained by fraud, or for other relief on the ground of fraud. | Ditto. | When the fraud becomes known to the party wronged. |
| 96. For relief on the ground of mistake. | Ditto. | When the mistake becomes known to the plaintiff. |
| 97. For money paid upon an existing consideration which afterwards fails. | Ditto. | The date of the failure. |
| 98. To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust. | Ditto. | The date of the trustee's death, or, if the loss has not then resulted, the date of the loss. |
| 99. For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers. | Ditto. | The date of the payment in excess of the plaintiff's own share. |
| 100. By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution. | Ditto. | When the right to contribution accrues. |
| 101. For a seaman's wages. | Ditto. | The end of the voyage during which the wages are earned. |
| 102. For wages not otherwise expressly provided for by this schedule. | Ditto. | When the wages accrue due. |

| Description of suit. | Period of limitation. | Time from which period begins to run. |
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| 103. By a Muhammadan for exigible dower (<i>mu'wajjal</i>). | Three years. | When the dower is demanded and refused or (where, during the continuance of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce. |
| 104. By a Muhammadan for deferred dower (<i>mu'uwajjal</i>). | Ditto. | When the marriage is dissolved by death or divorce. |
| 105. By a mortgager after the mortgage has been satisfied to recover surplus collections received by the mortgagee. | Ditto. | When the mortgager re-enters on the mortgaged property. |
| 106. For an account and a share of the profits of a dissolved partnership. | Ditto. | The date of the dissolution. |
| 107. By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate. | Ditto. | The date of the payment. |
| 108. By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease. | Ditto. | When the trees are cut down. |
| 109. For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant. | Ditto. | When the profits are received. |
| 110. For arrears of rent. | Ditto. | When the arrears become due. |
| 111. By a vendor of immoveable property for personal payment of unpaid purchase-money. | Ditto. | The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance. |
| 112. For a call by a company registered under any Statute or Act. | Ditto. | When the call is payable. |
| 113. For specific performance of a contract. | Ditto. | The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. |
| 114. For the rescission of a contract. | Ditto. | When the facts entitling the plaintiff to have the contract rescinded first become known to him. |
| 115. For compensation for the breach of any contract, express or implied, not in writing registered and not here-in specially provided for. | Ditto. | When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases. |
| <i>Part VII. Six years.</i> | | |
| 116. For compensation for the breach of a contract in writing registered. | Six years. | When the period of limitation would begin to run against a suit brought on a similar contract not registered. |
| 117. Upon a foreign judgment as defined in the Code of Civil Procedure, 1908. | Ditto. | The date of the judgment. |
| 118. To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place. | Ditto. | When the alleged adoption becomes known to the plaintiff. |

| Description of suit. | Period of limitation. | Time from which period begins to run. |
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| 119. To obtain a declaration that an adoption is valid. | Six years. | When the rights of the adopted son, as such, are interfered with. |
| 120. Suit for which no period of limitation is provided elsewhere in this schedule. | Ditto. | When the right to sue accrues. |
| <i>Part VIII. Twelve years.</i> | | |
| 121. To avoid incumbrances or undertenures in an entire estate sold for arrears of Government revenue, or in a patni taluk or other saleable tenure sold for arrears of rent. | Twelve years. | When the sale becomes final and conclusive. |
| 122. Upon a judgment obtained in British India, or a recognisance. | Ditto. | The date of the judgment or recognisance. |
| 123. For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate. | Ditto. | When the legacy or share becomes payable or deliverable. |
| 124. For possession of an hereditary office. | Ditto. | When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation.</i> An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed. |
| 125. Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage. | Ditto. | The date of the alienation. |
| 126. By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property. | Ditto. | When the alienee takes possession of the property. |
| 127. By a person excluded from joint family property to enforce a right to share therein. | Ditto. | When the exclusion becomes known to the plaintiff. |
| 128. By a Hindu for arrears of maintenance. | Ditto. | When the arrears are payable. |
| 129. By a Hindu for a declaration of his right to maintenance. | Ditto. | When the right is denied. |
| 130. For the resumption or assessment of rent-free land. | Ditto. | When the right to resume or assess the land first accrues. |
| 131. To establish a periodically recurring right. | Ditto. | When the plaintiff is first refused the enjoyment of the right. |
| 132. To enforce payment of money charged upon immoveable property. | Ditto. | When the money sued for becomes due. |
| <i>Explanation.</i> The allowance and fees respectively called <i>malkana</i> and <i>haqq</i> shall, for the | | |

| Description of suit. | Period of limitation. | Time from which period begins to run. |
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| purpose of this article, be deemed to be money charged upon immoveable property. | Twelve years. | The date of the purchase. |
| 133. To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration. | | |
| 134. To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration. | Ditto. | The date of the transfer. |
| 135. Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged. | Ditto. | When the mortgager's right to possession determines. |
| 136. By a purchaser at a private sale for possession of immoveable property sold when the vendor was out of possession at the date of the sale. | Ditto. | When the vendor is first entitled to possession. |
| 137. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale. | Ditto. | When the judgment-debtor is first entitled to possession. |
| 138. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale. | Ditto. | The date when the sale becomes absolute. |
| 139. By a landlord to recover possession from a tenant. | Ditto. | When the tenancy is determined. |
| 140. By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immoveable property. | Ditto. | When his estate falls into possession. |
| 141. Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female. | Ditto. | When the female dies. |
| 142. For possession of immoveable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession. | Ditto. | The date of the dispossession or discontinuance. |
| 143. Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition. | Ditto. | When the forfeiture is incurred or the condition is broken. |
| 144. For possession of immoveable property or any interest therein not hereby otherwise specially provided for. | Ditto. | When the possession of the defendant becomes adverse to the plaintiff. |

| Description of suit. | Period of limitation. | Time from which period begins to run. |
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| | <i>Part IX. Thirty years.</i> | |
| 145. Against a depositary or pawnee to recover moveable property deposited or pawned. | Thirty years. | The date of the deposit or pawn. |
| 146. Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgager the possession of immoveable property mortgaged. | Ditto. | When any part of the principal or interest was last paid on account of the mortgage-debt. |
| 146A. By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession. | Ditto. | The date of the dispossession or discontinuance. |
| | <i>Part X. Sixty years.</i> | |
| 147. By a mortgagee for foreclosure or sale. | Sixty years. | When the money secured by the mortgage becomes due. |
| 148. Against a mortgagee to redeem or to recover possession of immoveable property mortgaged. | Ditto. | When the right to redeem or to recover possession accrues: Provided that all claims to redeem arising under instruments of mortgage of immoveable property situate in Lower Burma which had been executed before the first day of May 1863 shall be governed by the rules of limitation in force in that province immediately before the same day. |
| 149. Any suit by or on behalf of the Secretary of State for India in Council. | Ditto. | When the period of limitation would begin to run under this Act against a like suit by a private person. |

Second Division: Appeals.

| Description of appeal. | Period of limitation. | Time from which period begins to run. |
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| 150. Under the Code of Criminal Procedure, 1898, from a sentence of death passed by a Court of Session. | Seven days. | The date of the sentence. |
| 151. From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction. | Twenty days. | The date of the decree or order. |
| 152. Under the Code of Civil Procedure, 1908, to the Court of a District Judge. | Thirty days. | The date of the decree or order appealed from. |

| Description of appeal. | Period of limitation. | Time from which period begins to run. |
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| 153. Under the same Code to a High Court from an order of a Subordinate Court refusing leave to appeal to His Majesty in Council. | Thirty days. | The date of the order. |
| 154. Under the Code of Criminal Procedure, 1898, to any Court other than a High Court. | Ditto. | The date of the sentence or order appealed from. |
| 155. Under the same Code to a High Court, except in the cases provided for by article 150 and article 157. | Sixty days. | The date of the sentence or order appealed from. |
| 156. Under the Code of Civil Procedure, 1908, to a High Court except in the cases provided for by article 151 and article 153. | Ninety days. | The date of the decree or order appealed from. |
| 157. Under the Code of Criminal Procedure, 1898, from an order of acquittal. | Six months. | The date of the order appealed from. |

Third Division: Applications.

| Description of application. | Period of limitation. | Time from which period begins to run. |
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| 158. Under the Code of Civil Procedure, 1908, to set aside an award. | Ten days. | When the award is submitted to the Court. |
| 159. For leave to appear and defend a suit under the summary procedure referred to in section 128 (2) (f) of the same Code. | Ditto. | When the summons is served. |
| 160. For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing. | Fifteen days. | When the application for review is rejected. |
| 161. For a review of judgment by a Provincial Court of Small Causes or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction. | Ditto. | The date of the decree or order. |
| 162. For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction. | Twenty days. | Ditto. |
| 163. By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs. | Thirty days. | The date of the dismissal. |

| Description of application. | Period of limitation. | Time from which period begins to run. |
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| 164. By a defendant, for an order to set aside a decree passed <i>ex parte</i> . | Thirty days. | The date of the decree or, where the summons was not duly served, when the applicant has knowledge of the decree. |
| 165. Under the Code of Civil Procedure, 1908, by a person dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession. | Ditto. | The date of the dispossession. |
| 166. Under the same Code to set aside a sale in execution of a decree. | Ditto. | The date of the sale. |
| 167. Complaining of resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree. | Ditto. | The date of the resistance or obstruction. |
| 168. For the readmission of an appeal dismissed for want of prosecution. | Ditto. | The date of the dismissal. |
| 169. For rehearing of an appeal heard <i>ex parte</i> . | Ditto. | The date of the decree in appeal or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree. |
| 170. For leave to appeal as a pauper. | Ditto. | The date of the decree appealed from. |
| 171. Under the Code of Civil Procedure, 1908, for an order to set aside an abatement. | Sixty days. | The date of the abatement. |
| 172. Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal. | Ditto. | The date of the order of dismissal. |
| 173. For a review of judgment except in the cases provided for by article 161 and article 162. | Ninety days. | The date of the decree or order. |
| 174. For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified. | Ditto. | When the payment or adjustment is made. |
| 175. For payment of the amount of a decree by instalments. | Six months. | The date of the decree. |
| 176. Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party. | Ditto. | The date of the death of the deceased plaintiff or appellant. |
| 177. Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party. | Ditto. | The date of the death of the deceased defendant or respondent. |
| 178. Under the same Code for the filing in Court of an award | Ditto. | The date of the award. |

| Description of application. | Period of limitation. | Time from which period begins to run. |
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| in a suit made in any matter referred to arbitration by order of the Court, or of an award made in any matter referred to arbitration without the intervention of a Court. | | |
| 179. By a person desiring to appeal under the same Code to His Majesty in Council for leave to appeal. | Six months. | The date of the decree appealed from. |
| 180. By a purchaser of immovable property at a sale in execution of a decree for delivery of possession. | Three years. | When the sale becomes absolute. |
| 181. Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908. | Ditto. | When the right to apply accrues. |
| 182. For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908. | Three years; or, where a certified copy of the decree or order has been registered, six years. | <ol style="list-style-type: none"> 1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or 3. (where there has been a review of judgment) the date of the decision passed on the review, or 4. (where the decree has been amended) the date of amendment, or 5. (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order, or 6. (where the notice next hereinafter mentioned has been issued) the date of issue of notice to the person against whom execution is applied for to show cause why the decree should not be executed against him, when the issue of such a notice is required by the Code of Civil Procedure, 1908, or 7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date. |
| | | <p><i>Explanation I.</i> Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their</p> |

| Description of application. | Period of limitation. | Time from which period begins to run. |
|--|-----------------------|---|
| <p>183. To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.</p> | <p>Twelve years.</p> | <p>representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.</p> <p>Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.</p> <p><i>Explanation II.</i> "Proper Court" means the Court whose duty it is to execute the decree or order.</p> <p>When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right:</p> <p>Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment or the latest of such revivors, payments or acknowledgments, as the case may be.</p> |

The Second Schedule.

Territories referred to in section 31.

(See section 31.)

The Presidency of Fort St. George.

The Presidency of Bombay.

The Sambalpur District of the Bengal Division of the Presidency of Fort William.

The United Provinces of Agra and Oudh.

Burma.

The Central Provinces.

Ajmer-Merwara.

The Third Schedule.

| Year. | No. | Short title. | Extent of repeal. |
|-------|------|---|--|
| 1877 | XV | The Indian Limitation Act, 1877. | The whole. |
| 1877 | XVII | The Punjab Courts Act, 1877. | So much as has not been repealed. |
| 1879 | XII | The Registration and Limitation Acts Amendment Act, 1879. | In the title the words "and the Limitation Act, 1877", and after section 107, from the words "and whereas" to the end of the Act. |
| 1881 | V | The Probate and Administration Act, 1881. | Section 156. |
| 1887 | IX | The Provincial Small Cause Courts Act, 1887. | Section 36. |
| 1888 | VII | The Civil Procedure Code Amendment Act, 1888. | In the title and in the preamble, the words "and the Indian Limitation Act, 1877", and of section 66 so much as has not been repealed. |
| 1892 | VI | The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892. | In the title and in the preamble, the words "the Indian Limitation Act, 1877", and section 1. |
| 1899 | X | The Carriers Act, 1899. | Section 3. |
| 1900 | VI | The Lower Burma Courts Act, 1900. | So much of section 47 and the first schedule as relates to the Indian Limitation Act, 1877. |
| 1900 | XI | The Indian Limitation Amendment Act, 1900. | The whole. |
| 1906 | IV | The Presidency Small Cause Courts Act, 1906. | Section 5. |

Act No. III of 1874.

Passed by the Governor General of India in Council. (Received the assent of the Governor General on the 24th February, 1874.)

An Act to explain and amend the law relating to certain Married Women, and for other purposes.

Preamble. Whereas it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January 1866, and for insurances on lives by persons married before or after that day: And whereas by the Indian Succession Act, 1865, section four, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried: And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives; It is hereby enacted as follows:

I. Preliminary.

Short title. 1. This Act may be called "The Married Women's Property Act, 1874".

Extent and application. 2. It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty. But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions. And the Governor General in Council may from

time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom he may consider it impossible or inexpedient to apply such provisions. The Governor General in Council may also revoke any such order, but not so that the revocation shall have any retrospective effect. All orders and revocations under this section shall be published in the *Gazette of India*. The fourth section of the said Indian Succession Act shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed at the time of the marriage, the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion.

Commencement. 3. This Act shall come into force on the passing thereof.

II. Married Women's wages and earnings.

Married women's earnings to be their separate property. 4. The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband, and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill, and all savings from and investments of such wages, earnings and property, shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.

III. Insurances by Wives and Husbands.

Married woman may effect policy of insurance. 5. Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

Insurance by husband for benefit of wife. 6. A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate. When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing. And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII of 1864 (*to constitute an Office of Official Trustee*), section ten. Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

IV. Legal proceedings by and against Married Women.

Married women may take legal proceedings. 7. A married woman may maintain a suit in her own name for the recovery of property of any description which, by force of the said Indian Succession Act, 1865, or of this Act, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.

Wife's liability for postnuptial debts. 8. If a married woman (whether married before or after the first day of January 1866) possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree: Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied, or render a married woman liable to arrest or to imprisonment in execution of a decree.

V. Husband's liability for Wife's debts.

Husband not liable for wife's antenuptial debts. Proviso. 9. A husband married after the thirty-first day of December 1865, shall not by reason only of such marriage be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried: Provided that nothing contained in this section shall affect any suit instituted before the passing of this Act, nor invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's antenuptial debts.

Act No. XVIII of 1891 as extended by Act I of 1893.

Passed by the Governor General of India in Council. (Received the assent of the Governor General on the 1st October, 1891.)

An Act to amend the Law of Evidence with respect to Bankers' Books.

Whereas it is expedient to amend the Law of Evidence with respect to Bankers' Books; It is hereby enacted as follows:

Title, extent and commencement. 1. 1. This Act may be called the Bankers' Books Evidence Act, 1891. 2. It extends to the whole of British India; and 3. It shall come into force at once.

Definitions. 2. In this Act, unless there is something repugnant in the subject or context: 1. "Company" means a company registered under any of the enactments relating to companies from time to time in force in British India, or incorporated by an Act of Parliament or of the Governor General in Council, or by Royal Charter or Letters Patent. 2. "Bank" and "Banker" mean: a) Any company carrying on the business of bankers; b) Any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided; c) Any post-office savings bank or money order office. 3. "Bankers' books" include ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of a bank. 4. "Legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration. 5. "The Court" means the person or persons before whom a legal proceeding is held or taken. 6. "Judge" means a Judge of a High Court. 7. "Trial" means any hearing before the Court at which evidence is taken, and 8. "Certified copy" means a copy of any entry in the books of a bank together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

Power to extend provisions of Act. 3. The Local Government may, from time to time, by notification in the official Gazette, extend the provisions of this Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account books, namely, a cash-book, a day-book or journal, and a ledger, and may in like manner rescind any such notification.

Mode of proof of entries in bankers' books. 4. Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

Case in which officer of bank not compellable to produce books. 5. No officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

Inspection of books by order of Court or Judge. 6. 1. On the application of any party to a legal proceeding the Court or a Judge may order that such party

be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies. 2. An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct. 3. The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

Costs. 7. 1. The costs of any application to the Court or a Judge under or for the purposes of this Act and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank. 2. Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding. 3. Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself: Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

The Indian Securities Act, 1886 as amended by Act XII of 1891.

Act No. XIII of 1886.

Passed by the Governor General of India in Council. (Received the assent of Governor General on the 19th March, 1886.)

An Act to consolidate and amend the law relating to Government Securities.¹⁾

Whereas it is expedient to consolidate and amend the law relating to Government securities; It is hereby enacted as follows:

Short title and commencement. 1. This act may be called the Indian Securities Act, 1886; and 2. It shall come into force on the first day of April, 1886. 3. Repealed by Act XII of 1891.

Repeal. 2. 1. On and from the day on which this Act comes into force, the Indian Securities Act, 1881, and the Indian Securities Act, 1885, shall be repealed. 2. But any authority conferred, notification issued, list published or rule or order made under either of those Acts shall, so far as may be, be deemed to have been conferred, issued, published or made under this Act.

Definitions. 3. In this Act: 1. "Government security" includes promissory notes, debentures, stock-certificates and all other securities issued by the Government of India or by any Local Government in respect of any loan contracted either before or after the passing of this Act, but does not include a stock-note or a currency-note: and 2. "Prescribed" means prescribed by rules made by the Governor General in Council.

Notice of trust not receivable. 4. No notice of any trust in respect of any Government security shall be receivable by the Government.

Right of survivors of joint payees of Government securities. 5. 1. Notwithstanding anything in the Indian Contract Act, 1872, section 45, when a Government

¹⁾ All Indian Government notes and certificates issued, or stock created in lieu thereof, on which interest is payable in London, and certain Indian Government promissory notes issued with coupons attached, are deemed personal estate & bona notabilia in England under 23 & 24 Vic. s. 5, s. 1.

security is payable to two or more persons jointly and either or any of them dies the security shall be payable to the survivor or survivors of those persons. 2. Nothing herein contained shall affect any claim which the representative of the deceased person may have against the survivor or survivors in respect of the security jointly payable to him or them and the deceased. 3. This section shall apply whether the death of the person to whom the security was jointly payable occurred or occurs before or after this Act comes into force.

Prohibition of indorsements on allonges to Government securities. 6. Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881, the holder of a Government security shall not be said to indorse the security, or be called the indorser thereof, if, when he signs the same for the purpose of negotiation, he inscribes his signature for that purpose elsewhere than on the back of the security itself.

Holding of Government securities by holders for the time being of public offices.

7. 1. In the case of any public office to which the Governor General in Council may, from time to time, by notification in the Gazette of India, declare this subsection to apply, a Government security may be made or indorsed payable to or to the order of the holder for the time being of the office by the name of the office. 2. When a Government security is made or indorsed as aforesaid, it shall be deemed to be transferred without any or further indorsement from each holder for the time being of the office to the succeeding holder for the time being of the office on and from the date on which the latter takes charge of the office. 3. When the holder for the time being of the office indorses to a third party a Government security made or indorsed as aforesaid, he shall subscribe the indorsement with his name and the name of the office. 4. A writing on a Government security now or heretofore standing in the name of the holder of a public office, whereby the security has been or was made or indorsed payable to or to the order of the holder of the office for the time being, shall not be deemed to be or to have been invalid by reason only of the payee or indorsee being the holder for the time being of a public office by the name of the office. 5. This section applies as well to an office of which there are two or more joint holders as to an office of which there is a single holder.

Transfer and discharge of certificates and coupons. 8. 1. Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of the loan, the title to the certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer. 2. On payment, by or on behalf of the Government, to the bearer of the certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if the certificate or coupon were a promissory note payable to bearer.

Indorser of Government security not liable for amount thereof. 9. A person shall not, by reason only of his having indorsed a Government security, be liable to pay any money due, either as principal or as interest, thereunder.

Impression of signature on Government securities. 10. 1. The signature of the officer of the Government of India authorized to sign Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on the securities. 2. A signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if it had been inscribed in the proper handwriting of the officer.

Issue of renewed securities. 11. A person claiming to be entitled to a Government security as payable to him under an indorsement may, on satisfying the prescribed officer of the justice of his claim and paying the prescribed fee and delivering the security duly receipted to the prescribed officer, obtain from the officer a renewed security issued payable to himself.

Issue of duplicate securities. 12. 1. When a Government security is alleged to have been wholly or partly lost or destroyed, and a person claims to be the person to whom but for the loss or destruction it would be payable, he may, on application to the prescribed officer, and on producing proof to his satisfaction of the loss or destruction and of the justice of the claim, obtain from him an order for: a) The payment of interest in respect of the security said to be lost or destroyed pending the issue of a duplicate security; and b) The issue of a duplicate security

payable to the applicant. 2. An order shall not be passed under sub-section (1) until after the issue of the prescribed notification of the loss or destruction and after the expiration of the prescribed period, nor until the application has given the prescribed indemnity against the claims of all persons deriving title under the security lost or destroyed. 3. A list of the securities in respect of which an order is passed under sub-section (1) shall be published in the Gazette of India at such times as the Governor General in Council may, from time to time, direct.

Period after which the Government is released from liability in respect of original security. 13. When a renewed security has been issued under section 11, or a duplicate security has been issued under section 12, the Government shall be discharged from all liability in respect of the original security of which the renewed or duplicate security has been issued: a) In the case of a renewed security, after the lapse of six years from the date of the issue of the renewed security; b) In the case of a duplicate security, after the lapse of six years from the date of the publication under section 12, sub-section (3), of the list in which the security is first mentioned, or from the date of the last payment of interest on the original security, whichever date is the later.

Power of Governor General in Council to make rules. 14. The Governor General in Council may, from time to time, make rules to prescribe: a) The mode in which payment of interest in respect of Government securities is to be recorded and acknowledged; b) The circumstances in which Government securities must be renewed before further payment of interest thereon can be claimed; c) The fees to be paid in respect of applications under sections 11 and 12; d) The form in which securities delivered for renewal are to be receipted; e) The officer who is to exercise all or any of the powers and perform all or any of the duties prescribed by sections 11 and 12; f) The proof which is to be produced by persons applying for duplicate securities; g) The form and mode of publication of the notification mentioned in section 12, and the period after which interest may be paid on a duplicate security may be issued under that section; h) The nature and amount of the indemnity so be given by a person applying under section 12 for the payment of interest or the issue of a duplicate security; and, i) Generally, all matters connected with the grant of renewed and duplicate securities.

Publication of drafts and rules. 15. 1. The Governor General in Council shall, before making rules under section 14, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of the public. 2. There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration. 3. The Governor General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified. 4. Every rule made under section 14 shall be published in the Gazette of India, and the publication in that Gazette of a rule purporting to be made under that section shall be conclusive proof that it has been duly made.

The Indian Coinage Act, 1906.

Act No. III of 1906.

Passed by the Governor General of India in Council. (Received the assent of the Governor General on the 2nd March, 1906.)

An Act to consolidate and amend the law relating to Coinage and the Mint.

Whereas it is expedient to consolidate and amend the law relating to Coinage and the Mint; It is hereby enacted as follows:

Preliminary.

Short title and extent. 1. This Act may be called the Indian Coinage Act, 1906; and 2. It extends to the whole of British India, inclusive of British Baluchistan, the Sonthal Parganas and the Pargana of Spiti.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context: a) "Deface," with its grammatical variations and cognate expressions,

includes clipping, filing, stamping, or such other alteration of the surface or shape of a coin as is readily distinguishable from the effects of reasonable wear; b) "The Mint" includes the Mints now existing and any which may hereafter be established; c) "Prescribed" includes prescribed by a rule made under this Act; d) "Remedy" means variation from the standard weight and fineness; and e) "Standard weight" means the weight prescribed for any coin.

Power to establish and abolish Mints. 3. The Governor General in Council may, by notification in the Gazette of India: a) Establish a Mint at any place at which a Mint does not for the time being exist; and b) Abolish any Mint, whether now existing or hereafter established.

Silver Coinage.

Silver coins. 4. The following silver coins only shall be coined at the Mint for issue under the authority of the Governor General in Council, namely: a) A rupee to be called the Government rupee; b) A half-rupee, or eight-anna piece; c) A quarter-rupee, or four-anna piece; and d) an eighth of a rupee, or two-anna piece.

Standard weight and fineness. 5. 1. The standard weight of the Government rupee shall be one hundred and eighty grains Troy, and its standard fineness shall be as follows, namely, eleven-twelfths, or one hundred and sixty-five grains of fine silver, and one-twelfth, or fifteen grains of alloy. 2. The other silver coins shall be of proportionate weight and of the same fineness. Provided that, in the making of silver coins, a remedy shall be allowed of an amount not exceeding the following, namely:

| | Remedy in weight. | Remedy in fineness. |
|-------------------------------|--------------------|----------------------|
| Rupee } | Five-thousandths. | Two-thousandths. |
| Half-rupee } | | |
| Quarter-rupee } | Seven-thousandths. | } Three-thousandths. |
| Eighth of a rupee } | Ten-thousandths. | |

Nickel Coinage.

Nickel coin. 6. The following nickel coin only shall be coined at the Mint for issue under the authority of the Governor General in Council, namely: a one-anna piece.

Standard weight. 7. The standard weight of the one-anna piece shall be sixty grains Troy. Provided that, in the making of nickel coin, a remedy shall be allowed of an amount not exceeding one-fortieth in weight.

Bronze Coinage.

Bronze coins. 8. The following bronze coins only shall be coined at the Mint for issue under the authority of the Governor General in Council, namely: a) A pice, or quarter-anna; b) A half-pice, or one-eighth of an anna; and c) A pie, being one-third of a pice, or one-twelfth of an anna.

Standard weight and composition. 9. 1. The standard weight of the pice shall be seventy-five grains Troy, and the other bronze coins shall be of proportionate weight. 2. Bronze coins shall be coined from a mixed metal consisting of copper, tin and zinc. Provided that, in the making of bronze coins, a remedy shall be allowed of an amount not exceeding one-fortieth in weight.

Dimensions and Designs of Coins.

Power to direct coining, and to prescribe dimensions and designs. 10. 1. The Governor General in Council may, by notification in the Gazette of India: a) Direct the coining and issuing of all coins referred to in sections 4, 6 and 8, and b) Determine the dimensions of, and designs for, such coins. 2. Until the Governor-General in Council otherwise determines by notification under sub-section 1., the dimensions and designs of the silver coins coined under this Act shall be those prescribed for the like silver coins under the Indian Coinage Act, 1870, at the time of the commencement of this Act.

Legal Tender.

Gold coins a legal tender. 11. Gold coins, whether coined at His Majesty's Royal Mint in England or at any Mint established in pursuance of a Proclamation of His Majesty as a branch of His Majesty's Royal Mint, shall be a legal tender in

payment or on account at the rate of fifteen rupees for one sovereign. Provided that such coins have not been called in by any Proclamation made in pursuance of the Coinage Act, 1870, or have not lost weight so as to be of less weight than that for the time being prescribed for like coins by or under the said Statute as the least current weight.

Silver coin when a legal tender. 12. 1. The rupee and half-rupee shall be a legal tender in payment or on account. Provided that the coin a) has not lost in weight so as to be more than two per cent. below standard weight, and b) has not been defaced. 2. The quarter-rupee and eighth of a rupee shall be a legal tender in payment or on account for any sum not exceeding one rupee. Provided that the coin: a) Has not lost in weight so as to be more than such percentage below standard weight as may be prescribed as the limit of reasonable wear, and b) Has not been defaced.

Nickel coin when a legal tender. 13. The nickel coin specified in section 6 shall be a legal tender in payment or on account for any sum not exceeding one rupee at the rate of sixteen for a rupee.

Bronze coin when a legal tender. 14. The bronze coins specified in section 8 shall be a legal tender in payment or on account for any sum not exceeding one rupee at the following rates, respectively, namely: a) The pice at the rate of sixty-four for a rupee, or four for an anna; b) The half-pice at the rate of one hundred and twenty-eight for a rupee, or eight for an anna; and c) The pie at the rate of one hundred and ninety-two for a rupee, or twelve for an anna.

Coin made under former Acts. 15. 1. a) All silver coin of the weight and standard specified in Acts No. XVII of 1835, No. XXI of 1838, No. XIII of 1862 and the Indian Coinage Act, 1870, and b) All copper coin of the weight specified in Acts No. XXI of 1835, No. XXII of 1844, No. XIII of 1862 and the Indian Coinage Act, 1870, which may have been issued since the passing of those Acts respectively, and declared by those Acts respectively to be a legal tender, shall, notwithstanding anything contained in this Act or in any Act hereby repealed, but subject in the case of silver coin to the provisos contained in section 12 of this Act in so far as such provisos apply to like coins under this Act, continue to be a legal tender for the amounts for which the like silver and bronze coins are a legal tender under this Act respectively. 2. All double pice copper coins which may have been issued under the Acts specified in sub-section 1., clause b), shall continue to be a legal tender in payment or on account for any sum not exceeding one rupee at the rate of thirty-two for a rupee or two for an anna.

Diminished, Defaced and Counterfeit Silver Coin.

Power to certain persons to cut diminished or defaced silver coins. 16. Where any silver coin which has been coined and issued under the authority of the Governor General in Council is tendered to any person authorised by the Governor General in Council or by the Local Government to act under this section, and such person has reason to believe that the coin: a) Has been diminished in weight so as to be more than such percentage below standard weight as may be prescribed as the limit of reasonable wear, or b) Has been defaced, he shall, by himself or another cut or break the coin.

Procedure in regard to coin cut under section 16 a). 17. A person cutting or breaking coin under the provisions of clause (a) of section 16 shall observe the following procedure, namely: a) If the coin has been diminished in weight so as to be more than such percentage below standard weight as may be prescribed as the limit of reasonable wear, but not more than such further percentage as may be prescribed in this behalf, he shall either return the pieces to the person tendering the coin, or, if such person so requests, shall receive and pay for the coin at such rates as may be prescribed in this behalf; and b) If the coin has been diminished in weight so as to be more than such further percentage below standard weight so prescribed as aforesaid, he shall return the pieces to the person tendering the coin, who shall bear the loss caused by such cutting or breaking.

Procedure in regard to coin cut under section 16 b). 18. A person cutting or breaking coin under the provisions of clause b) of section 16 shall observe the following procedure, namely: a) If such person has reason to believe that the coin has been fraudulently defaced, he shall return the pieces to the person tendering the coin, who shall bear the loss caused by such cutting or breaking; b) If such person

has not reason to believe that the coin has been fraudulently defaced, he shall receive and pay for the coin at its nominal value. *Explanation.* For the purposes of this section a coin which there is reason to believe has been defaced by sweating shall be deemed to have been fraudulently defaced.

Procedure in regard to coin which is liable to be cut under both clause a) and clause b) of section 16. 19. If a coin is liable to be cut or broken under the provisions of both clause a) and clause b) of section 16, the person cutting or breaking the coin shall deal with it: a) If he has reason to believe that the coin has been fraudulently defaced, under clause a) of section 18, and b) in other cases, under section 17.

Power to certain persons to cut counterfeit silver coin and procedure in regard to coin so cut. 20. Where any silver coin purporting to be coined or issued under the authority of the Governor General in Council is tendered to any person authorised by the Governor General in Council or by the Local Government to act under this section, and such person has reason to believe that the coin is counterfeit, he shall by himself or another cut or break the coin, and may at his discretion either return the pieces to the tenderer, who shall bear the loss caused by such cutting or breaking, or receive and pay for the coin according to the value of the silver bullion contained in it.

Supplemental Provisions.

Power to make rules. 21. 1. The Governor General in Council may make rules to carry out the purposes and objects of this Act. 2. In particular and without prejudice to the generality of the foregoing power, such rules may: a) Reduce the amount of remedy allowed by sections 5, 7 and 9 in the case of any coin; b) Provide for the guidance of persons authorised to cut or break coin under sections 16 and 20; c) Determine the percentage of diminution in weight below standard weight not being less in any case than two per cent. which shall be the limit of reasonable wear; d) Prescribe the further percentage referred to in clause a) of section 17, and the rates at which payments shall be made in the case of coins falling under the same clause; and e) Provide for the acceptance at prescribed rates by officers authorised in this behalf of the gold coins described in section 11 where such coins have lost weight so as to be of less weight than that for the time being prescribed for like coins by or under the Coinage Act, 1870, as the least current weight. 3. Every such rule shall be published in the Gazette of India, and on such publication shall have effect as if enacted in this Act.

Bar of suits. 22. No suit or other proceeding shall lie against any person in respect of anything in good faith done, or intended to be done, under or in pursuance of the provisions of this Act.

Saving of making of other coins at Mints. 23. Nothing in this Act shall be deemed to prohibit or restrict the making at the Mint of coins intended for issue as money by the Government of any territories beyond the limits of British India.

Repeals. 24. The Acts mentioned in the Schedule are hereby repealed to the extent specified in the last column thereof: Provided that copper coins of such descriptions as at the time of the commencement of this Act may be coined at the Mint for issue under the authority of the Governor General in Council may, notwithstanding the repeal of the said Acts, continue to be so coined until such time as the Governor General in Council may by notification in the Gazette of India otherwise direct, and all copper coins so coined shall be a legal tender in payment or on account for the amounts for which bronze coins of corresponding nominal value are a legal tender under this Act.

The Schedule.

(See section 24.)

Acts repealed.

| Year. | No. | Short title. | Extent of repeal. |
|-------|-------|--|---|
| 1870 | XXIII | The Indian Coinage Act, 1870. | So much as is unrepealed. |
| 1893 | VIII | The Indian Coinage and Paper Currency Act, 1893. | So much as relates to the Indian Coinage Act, 1870. |
| 1899 | XXII | The Indian Coinage and Paper Currency Act, 1899. | So much as relates to the Indian Coinage Act 1870. |

The Indian Paper Currency Act, 1882.

Act No. XX of 1882.

Passed by the Governor General of India in Council. (Received the assent of the Governor on the 26th October, 1882.)

An Act to amend the law relating to the Government Paper Currency.

(As modified up to the 16th September, 1899.)

Preamble. Whereas it is expedient to amend the law relating to the Government Paper Currency; It is hereby enacted as follows:

I. Preliminary.

Short title. Local extent. Commencement. 1. This Act may be called the Indian Paper Currency Act, 1882: It extends to the whole of British India¹; and it shall come into force on the passing thereof.

Act No. III of 1871 repealed. 2. 1. Act No. III of 1871 (*to consolidate and amend the law relating to the Government Paper Currency*) is hereby repealed. 2. All appointments made, rules prescribed, notifications published, authorities conferred, securities purchased and notes issued under the said Act, or any Act thereby repealed, shall, if in force, undisposed of or in circulation when this Act comes into force, be deemed to be respectively made, prescribed, published, conferred, purchased and issued under this Act. And all references made to any portion of the Indian Paper Currency Act, 1871, or any Act thereby repealed, in Acts or Regulations passed before this Act comes into force, shall be deemed to be made to the corresponding portion of this Act.

II. The Department of Paper Currency.

Department of Paper Currency. 3. 1. There shall continue to be a Department of the public service, whose function shall be the issue of promissory notes of the Government of India, payable to bearer on demand, for such sums, not being less than five rupees, as the Governor General in Council, from time to time, directs. 2. Such notes shall be called currency notes. 3. The Department shall be called the Department of Paper Currency.

Head Commissioner. Commissioners for Madras, Bombay and Rangoon. 4. At the head of the Department there shall be an officer called the Head Commissioner of Paper Currency, and there shall be three other officers, called, respectively, the Commissioner of Paper Currency for Madras, the Commissioner of Paper Currency for Bombay, and the Commissioner of Paper Currency for Rangoon.

Power to establish Circles of Issue, etc. 5. The Governor General in Council may, from time to time, by order notified in the Gazette of India: a) Establish districts, to be called Circles of Issue, four of which circles shall include the towns of Calcutta, Madras, Bombay and Rangoon, respectively; b) Appoint in each circle some one town to be the place of issue of currency notes, as hereinafter provided; c) Establish in each such town an office or offices of issue; d) Establish in any town situate in any circle an office, to be called a Currency Agency, and e) Declare that, for the purposes of this Act, any town (other than Calcutta, Madras, Bombay or any town situate in British Burma²) in which an office of issue is established, shall be deemed to be situate within such Presidency as is specified in the order.

Deputy Commissioners and Currency Agents. 6. For each Circle of Issue, other than those which include the towns of Calcutta, Madras, Bombay and Rangoon there shall be an officer called the Deputy Commissioner of Paper Currency, and for each Currency Agency an officer called the Currency Agent.

¹) Act XX of 1882 has been declared in force in the Sonthal Parganas by Regulation III of 1872, s. 3, as amended by Regulation III of 1886 [Bengal Code, Vol. I, Ed. 1889, p. 597]; in Upper Burma generally (except the Shan States) by Act XX of 1886, s. 6 [Burma Code, Ed. 1889, p. 364]; and in British Baluchistan by Regulation I of 1890, s. 3 [Baluchistan Code, Ed. 1890, p. 69]. — ²) This reference to British Burma should now be read as referring to Lower Burma—see Act XX of 1886, s. 4, in Burma Code, Ed. 1889, p. 364.

Subordination of Commissioners, etc. 7. For the purposes of this Act: a) The Commissioners of Paper Currency for Madras, Bombay and Rangoon, and the Deputy Commissioners of Paper Currency in the Presidency of Fort William in Bengal, shall be subordinate to the Head Commissioner of Paper Currency; and b) The Deputy Commissioners of Paper Currency in the Presidencies of Fort St. George and Bombay and in the Province of British Burma¹), shall be subordinate to the Commissioners of Paper Currency for Madras, Bombay and Rangoon, respectively; c) The Currency Agent at any town shall be subordinate to the Head Commissioner, Commissioner or Deputy Commissioner, as the case may be, of Paper Currency for the Circle of Issue in which that town is situate.

Appointment, suspension and removal of officers. 8. All officers under this Act shall be appointed and may be suspended or removed, by the Governor General in Council.

III. Supply and Issue of Currency Notes.

Head Commissioner to provide and distribute currency notes. 9. 1. The Head Commissioner shall provide currency notes of the denominations prescribed under this Act, and shall supply the Commissioners and the Currency Agents subordinate to him, and the Deputy Commissioners, with such notes as they need for the purposes of this Act. 2. The Commissioners and Deputy Commissioners shall supply the Currency Agents subordinate to them, respectively, with such notes as those Agents need for the purposes of this Act. 3. Every such note shall bear upon it the name of the town from which it is issued.

Signatures to notes. 10. 1. The name of the Head Commissioner, of one of the Commissioners, of a Deputy Commissioner or of some other person authorised by the Head Commissioner, or by one of the Commissioners, to sign currency notes, shall be subscribed to every such note, and may be impressed thereon by machinery. 2. Names so impressed shall be taken to be valid signatures.

Issue of notes for silver by Head Commissioner, Commissioners and Deputy Commissioners. 11. The Head Commissioner, the Commissioners and the Deputy Commissioners shall, in their respective Circles of Issue, on the demand of any person, issue, from the office or offices of issue established in their respective circles, currency notes of the denominations prescribed under this Act, in exchange for the amount thereof: a) In current silver coin of the Government of India; b) Or in gold coin which is legal tender under the Indian Coinage Act, 1870; c) (*Repealed by Act VIII of 1893*); d) In current silver coin made under the Native Coinage Act, 1876²), as to which coin a declaration has been made under section 3 of that Act; or d) (*Repealed by Act VIII of 1893*)³).

Issue of notes for silver by Currency Agents. 12. Any Currency Agent to whom notes have been supplied under section 9 may, if he thinks fit, on the demand of any person, issue from his agency any such notes in exchange for the amount thereof in any coin specified in clause a) or clause c) of section 11.

Issue of notes for gold. 13. The Governor General in Council may, from time to time, by order notified in the Gazette of India, direct that currency notes shall be issued at such offices of issue as are named in the order, in exchange for gold coin of full weight of the Government of India, or for foreign gold coin or gold bullion, at the rates, and according to the rules and conditions, fixed by that order.

14. [*Melting and assaying bullion or coin received for notes.*] *Repealed by Act VIII of 1893.*

15. [*Certificates for bullion or coin.*] *Repealed by Act VIII of 1893.*

IV. Notes where legal tender and where payable.

Notes where legal tender. 16. Within any of the said Circles of Issue, a currency note issued from any town in that circle shall be a legal tender for the amount expressed in that note, in payment or on account of: a) Any revenue or other claim, to the amount of five rupees and upwards, due to the Government of India, and b) Any sum of five rupees and upwards, due by the Government of India, or by any body corporate or person in British India: Provided that no such note shall be deemed to be a legal tender by the Government of India at any office of issue.

¹) This reference to British Burma should now be read as referring to Lower Burma—see Act XX of 1886, s. 4, in Burma Code, Ed. 1889, p. 364. — ²) Printed, General Acts, 1867-76, Ed. 1887, p. 551. — ³) The proviso, repealed by Act VIII of 1893 is omitted.

Notes where payable. 17. A currency note shall be payable only: a) At the office or offices of issue of the town from which it has been issued, and b) In the case of notes issued from any town not situate in British Burma¹), also at the Presidency-town of the Presidency within which that town is situate.

Notes issued from Currency Agencies to be deemed to be issued from place of issue of circle. 18. For the purposes of sections 16 and 17, notes issued from any Currency Agency shall be deemed to have been issued from the town appointed under section 5 to be the place of issue in the Circle of Issue in which that Agency is established.

V. Reserve.

Coin and bullion received for notes to be kept as a reserve, except amount fixed as herein provided. 19. The whole amount of the coin and bullion received under this Act, and under Act III of 1871, for currency notes, shall be retained and secured as a reserve to pay those notes, with the exception of such an amount, not exceeding eighty millions of rupees, as the Governor General in Council, with the consent of the Secretary of State for India, from time to time fixes.

Investment of such amount. 20. The amount so fixed shall be published in the Gazette of India, and the whole, or such part thereof as the Governor General in Council from time to time fixes, shall be invested in securities of the Government of India.

Appropriation of coin, bullion and securities. 21. 1. The said coin, bullion and securities shall be appropriated and set apart to provide for the satisfaction and discharge of the said notes; and the said notes shall be deemed to have been issued on the security of the said coin, bullion and securities, as well as on the general credit of the Government of India: Provided that any coin or bullion so received and appropriated may be sold or exchanged for gold or silver coin of the Government of India of the like value, which shall be so appropriated and set apart instead of the coin or bullion sold or exchanged. 2. (*Repealed by Act VIII of 1893.*)

Trustees of securities purchased under Act. 22. The securities purchased under section 20 shall be held by the Head Commissioner and the Master of the Mint at Calcutta, in trust for the Secretary of State for India in Council.

Power to sell and replace securities. 23. 1. The Head Commissioner may, at any time when ordered so to do by the Governor General in Council, sell and dispose of any portion of the abovementioned investment. 2. For the purpose of effecting such sales, the Master of the Mint at Calcutta shall, on a request in writing from the Head Commissioner, at all times sign and endorse the securities, and the Head Commissioner, if so directed by the Governor General in Council, may purchase securities of the Government of India to replace such sales.

Accounts of interest on securities. 24. 1. The interest accruing due on the securities purchased and held under this Act shall be entered in a separate account to be annually rendered by the Head Commissioner to the Governor General in Council. 2. The amount of the interest shall, from time to time, as it becomes due, be paid to the credit of the Government of India, under the head of "Profits of Notes Circulation." 3. An account, showing the amount of the profits, and of the charges and expenses incidental thereto, shall be made up and published annually in the Gazette of India.

VI. Private Bills payable to Bearer on Demand.

Prohibition of issue of private bills or notes payable to bearer on demand. 25. No body corporate or person in British India shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand, of any such body corporate or of any such person: Provided that cheques or drafts, payable to bearer on demand or otherwise, may be drawn on bankers, shroffs or agents, by their customers or constituents, in respect of deposits of money in the hands of those bankers, shroffs or agents, and held by them at the credit and disposal of the persons drawing such cheques or drafts.

Penalty for issuing such bills or notes. Prosecutions. 26. 1. Any body corporate or person committing any offence under section 25 shall, on conviction

¹) This reference to British Burma should now be read as referring to Lower Burma—see Act XX of 1886, s. 4, in Burma Code, Ed. 1889, p. 364.

before a Presidency Magistrate, or a Magistrate of the first class, be punished with a fine equal to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed. 2. Every prosecution under this section shall be instituted by the Head Commissioner, Commissioner or Deputy Commissioner, as the case may be, of Paper Currency for the Circle of Issue in which the bill, hundi, note or engagement is drawn, accepted, made or issued.

VII. Miscellaneous.

Monthly abstracts of accounts. 27. An abstract of the accounts of the Department of Paper Currency, showing: a) The whole amount of currency notes in circulation; b) The amount of coin and bullion reserved, distinguishing gold from silver, and c) The nominal value of, and the price paid for, the Government securities held by the said Departement, shall be made up monthly by the Head Commissioner, and published, as soon as may be, in the Gazette of India.

Supplementary powers of the Government of India. 28. 1. The Governor General in Council may, from time to time, by notification in the Gazette of India: a) Fix the amounts (not being less than five rupees) for which currency notes shall be issued; b) Alter the limits of any of the Circles of Issue; c) Declare the places at which currency notes shall be issued; d) Fix the rates, rules and conditions at and according to which gold may be taken in exchange for currency notes; e) Fix the charge for melting and assaying bullion and foreign coin received for such notes; f) (*Repealed by Act VIII of 1893.*); g) Regulate any matters relative to paper currency which are not provided for by this Act; and h) Revoke or alter any notification previously published under this Act. 2. Every notification under this section shall come into force on the day therein in that behalf mentioned, and shall have effect as if it were enacted in this Act. 3. (*Repealed by Act VIII of 1893.*)

Interest Act, No. XXXII of 1839.¹⁾

Received the G.-G's Assent on the 30th December, 1839.

An Act concerning the allowance of Interest in certain cases.

(As modified up to June 1891.)

Preamble. Power of Court to allow interest. 1. Whereas it is expedient to extend to the territories under the government of the East India Compagny, as well within the jurisdiction of Her Majesty's Courts as elsewhere, the provisions of the Statute 3rd and 4th William IV., chapter 42, section 28, concerning the

¹⁾ This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts. See Act XV. of 1874, s. 3.

It has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts, namely:

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| Sindh | See Gazette of India . . . | Dec. 4, 1880, Pt. I., p. 672. |
| West Jalpaiguri, the Western Duárs, namely, that portion of the Jalpaiguri Division known as the Western Duárs that is, the country lying between the Tistá and Sunkos rivers in the Jalpaiguri District, the Western Hills of Dárjiling (that is, the Hills west of the Tistá river in the District of Dárjiling), the Darjiling Tarái, and the Damson Sub-division of the District of Dárjiling . . . | Ditto . . . | Mar. 5, 1881, Pt. I., p. 74. |
| The District of Hazáribágh | Ditto . . . | Oct. 22, 1881, Pt. I., p. 507. |
| Ditto Lohárdaga | Ditto . . . | Oct. 22, 1881, Pt. I., p. 508. |
| Ditto Mánbhum | Ditto . . . | Oct. 22, 1881, Pt. I., p. 509. |
| The Pargana of Dhálbhum in the District of Singbhum . | Ditto . . . | Oct. 22, 1881, Pt. I., p. 510. |
| The Jhánsi Division | Ditto . . . | Aug. 31, 1878, Pt. I., p. 546. |
| The Scheduled portion of the Mirzápur District | Ditto . . . | May 31, 1879, Pt. I., p. 383. |

allowance of interest in certain cases: It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or, if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment. Provided that interest shall be payable in all cases in which it is now payable by law.

Interest Act, No. XXVIII of 1855.¹⁾

Received the G.-G.'s Assent on the 19th September, 1855.

An Act for the repeal of the Usury Laws.

Preamble. Whereas it is expedient to repeal the laws now in force relating to usury; It is enacted as follows:

Repeal of enactments. 1. [*Repealed by Act XIV, of 1870.*]

Rate of interest to be decreed by Courts. 2. In any suit in which interest is recoverable, the amount shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties; and, if no rate shall have been agreed upon, at such rate as the Court deem reasonable.

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| Jaunsar Báwar | See Gazette of India . . . | May 31, 1879, Pt. I., p. 382. |
| The Scheduled Districts of the Central Provinces | Ditto . . . | Dec. 13, 1879, Pt. I., p. 771. |
| The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán | Ditto . . . | Jan. 30, 1886, Pt. I., p. 48. |
| The District of Lahaul | Ditto . . . | May 1, 1886, Pt. I., p. 301. |
| The District of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Duárs), and Kachar (excluding the North Káchár Hills) | Ditto . . . | Aug. 24, 1878, Pt. I., p. 533. |
| The District of Silhat | Ditto . . . | Oct. 4, 1879, Pt. I., p. 631. |
| It has been extended, under the same Act, to the following Scheduled Districts, namely: | | |
| Kumáon and Garhwál | See Gazette of India . . . | Nov. 4, 1876, Pt. I., p. 606. |
| The North-Western Provinces Tarái | Ditto . . . | Sep. 23, 1876, Pt. I., p. 505. |

¹⁾ This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts. — See Act XV. of 1874, s. 3.

It has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts, namely:

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| Sindh | See Gazette of India . . . | Dec. 4, 1880, Pt. I., p. 672. |
| West Jalpaiguri, the Western Duárs, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District | Ditto . . . | Mar. 5, 1881, Pt. I., p. 47. |
| The District of Hazáribagh | Ditto . . . | Oct. 22, 1881, Pt. I., p. 507. |
| Ditto Lohárdaga | Ditto . . . | Oct. 22, 1881, Pt. I., p. 508. |
| Ditto Mánbhum | Ditto . . . | Oct. 22, 1881, Pt. I., p. 509. |
| Pargana Dhálbhum in the District of Singbhum | Ditto . . . | Oct. 22, 1881, Pt. I., p. 510. |
| The Jhánsi Division | Ditto . . . | Aug. 31, 1878, Pt. I., p. 546. |
| The Scheduled portion of the Mirzápur District | Ditto . . . | May 31, 1879, Pt. I., p. 383. |
| Jaunsar Báwar | Ditto . . . | May 31, 1879, Pt. I., p. 382. |
| The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khan, and Dera Gházi Khán | Ditto . . . | Jan. 30, 1886, Pt. I., p. 48. |

Rate of interest upon a judgment or decree. 3. Whenever a Court shall direct that a judgment or decree shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit.

Contracts for usufruct of property in lieu of interest. 4. A mortgage or other contract for the loan of money, by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

Amount of interest to be deposited in certain cases of conditional sales under Bengal Regulations. Proviso. 5. Whenever, under the Regulations of the Bengal Code, a deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated and interest be payable under the terms of the contract at the rate of twelve per centum per annum. Provided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated.

Rate of interest on future adjustments of accounts. 6. In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein; or, if no rate of interest shall have been stipulated and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

[7 & 8. Repealed by Act XIV, of 1870.]

Schedule of Repealed Enactments.

(Repealed by Act XIV of 1870.)

The Indian Merchandise Marks Act, 1889.

Act No. IV of 1889.

(1st March, 1889.)

An Act to amend the Law relating to Fraudulent Marks on Merchandise.

(As modified up to the 1th February, 1904.)

Whereas it is expedient to amend the law relating to fraudulent marks on merchandise; It is hereby enacted as follows:

Title, extent and commencement. 1. 1. This Act may be called the Indian Merchandise Marks Act, 1889. 2. It extends to the whole of British India; and 3. It shall come into force on the first day of April, 1889.

Definitions. 2. In this Act, unless there is something repugnant in the subject or context: 1. "Trade mark" has the meaning assigned to that expression in section 478 of the Indian Penal Code as amended by this Act. 2. "Trade description"

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| The District of Lahaul . . . | See Gazette of India . . . | May 1, 1886, Pt. I., p. 301. |
| The Scheduled Districts of the Central Provinces | Ditto . . . | Dec. 13, 1879, Pt. I., p. 771. |
| The District of Silhat . . . | Ditto . . . | Oct. 4, 1879, Pt. I., p. 631. |
| The Districts of Kámrup, Naulong, Darrang, Sibságar, Lakhimpur, Goalpara (excluding the Eastern Duárs), and Káchár (excluding the North Káchár Hills) . . . | Ditto . . . | Aug. 24, 1878, Pt. I., p. 533. |
| It has been extended, under the same Act, to the following Scheduled Districts: | | |
| Kumáon and Garhwál . . . | See Gazette of India . . . | Nov. 4, 1876, Pt. I., p. 606. |
| The North-Western Provinces Terái | Ditto . . . | Sep. 23, 1876, Pt. I., p. 605. |

means any description, statement or other indication, direct or indirect: a) As to the number, quantity, measure, gauge or weight of any goods, or b) As to the place or country in which, or the time at which, any goods were made or produced, or c) As to the mode of manufacturing or producing any goods, or d) As to the material of which any goods are composed, or e) As to any goods being the subject of an existing patent, privilege or copyright; And the use of any numeral, word or mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act. 3. "False trade description" means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act. 4. "Goods" means anything which is the subject of trade or manufacture, and 5. "Name" includes any abbreviation of a name.

Amendment of the Indian Penal Code.

Substitution of new sections for sections 478 to 489 of the Indian Penal Code.

3. For that part of Chapter XVIII of the Indian Penal Code which relates to Trade and Property Marks, the following shall be substituted, namely:

Of Trade, Property and Other Marks.

Trade mark. 478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark, and for the purposes of this Code the expression 'trade mark' includes any trade mark which is registered in the register of trade marks kept under the Patents, Designs and Trade Marks Act, 1883, and any trade mark which, either with or without registration, is protected by law in any British Possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable.

Property mark. 479. A mark used for denoting that moveable property belongs to a particular person is called a property mark.

Using a false trade mark. 480. Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

Using a false property mark. 481. Whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Punishment for using a false trade mark or property mark. 482. Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting a trade mark or property mark used by another. 483. Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a mark used by a public servant. 484. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place or that the property is of a particular quality or has passed through a particular office or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or possession of any instrument for counterfeiting a trade mark or property mark. 485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Selling goods marked with a counterfeit trade mark or property mark. 486. Whoever sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves: a) That, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and b) That, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or c) That otherwise he had acted innocently, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making a false mark upon any receptacle containing goods. 487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for making use of any such false mark. 488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Tampering with property mark with intent to cause injury. 489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Provisions supplemental to the definition of false trade description. 4. 1. The provisions of this Act respecting the application of a false trade description to goods or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such numerals, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and to goods having such numerals, words or marks, or arrangement or combination, applied thereto. **2.** The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods any name or initials: a) Not being a trade mark, or part of a trade mark and b) Being identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorized the use of such name or initials. **3.** A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description.

Application of trade descriptions. 5. 1. A person shall be deemed to apply a trade description to goods who: a) Applies it to the goods themselves, or b) Applies it to any covering label, reel or other thing in or with which the goods are sold or

are exposed or had in possession for sale or any purpose of trade or manufacture, or c) Places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade description has been applied, or d) Uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description. 2. A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing. 3. The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression "label" includes any band or ticket.

Penalty for applying a false trade description. 6. If a person applies a false trade description to goods, he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in the case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Penalty for selling goods to which a false trade description is applied. 7. If a person sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, he shall, unless he proves: a) That, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade description, and b) That, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or c) That otherwise he had acted innocently, be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Unintentional Contravention of the Law relating to Marks and Descriptions.

Unintentional contravention of the law relating to marks and descriptions. 8. Where a person is accused under section 482 of the Indian Penal Code of using a false trade mark or property mark by reason of his having applied a mark to any goods, property or receptacle in the manner mentioned in section 480 or section 481 of that Code, as the case may be, or under section 6 of this Act of applying to goods any false trade description, or under section 485 of the Indian Penal Code of making any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, and proves: a) That in the ordinary course of his business he is employed, on behalf of other persons, to apply trade marks or property marks, or trade descriptions, or, as the case may be, to make dies, plates or other instruments for making, or being used in making, trade marks or property marks, and that in the case which is the subject of the charge he was so employed and was not interested in the goods or other thing by way of profit or commission dependent on the sale thereof, and b) That he took reasonable precautions against committing the offence charged, and c) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and d) That, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied, he shall be acquitted.

Forfeiture of Goods.

Forfeiture of goods. 9. 1. When a person is convicted under section 482 of the Indian Penal Code of using a false trade mark, or under section 486 of that Code of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark applied thereto, or under section 487 or section 488 of that Code of making, or making use of, a false mark, or under section 6 or section 7 of this Act of applying a false trade description to goods, or of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, or is acquitted on proof of the matter or matters specified in section 486 of the Indian Penal Code or section 7 or section 8 of this Act, the Court

convicting or acquitting him may direct the forfeiture to Her Majesty of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed. 2. When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also. 3. When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture.

Amendment of the Sea Customs Act, 1878.

Amendment of section 18, Act VIII of 1878. 10. 1. For clause d) of section 18 of the Sea Customs Act, 1878, the following shall be substituted, namely: d) Goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code, or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889; e) Goods made or produced beyond the limits of the United Kingdom and British India and having applied thereto any name or trade mark being, or purporting to be, or being a colourable imitation of, the name or trade mark of any person who is a manufacturer, dealer or trader in the United Kingdom or in British India unless: i) the name or trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and ii) [The country in which that place is situated is] in that indication indicated in letters as large and conspicuous as any letter in the name or trade mark, and in the same language and character as the name or trade mark. 2. To section 18 of the Sea Customs Act, 1878, as amended by sub-section 1., the following shall be added, namely: f) Piece-goods, such as are ordinarily sold by length of by the piece, which: i) Have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and ii) Have been manufactured beyond the limits of India, or iii) Having been manufactured within those limits have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881.

Addition of a section after section 19, Act VIII of 1878. 11. 1. Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs-officer or other officer appointed by the Local Government in this behalf may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported. 2. The Governor General in Council may make regulations, either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence. 3. Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters, and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom or British India. 4. Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods. 5. The regulations may provide for the informant reimbursing any public officer and the Secretary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention. 6. All regulations under this section shall be published in the Gazette of India and in the Calcutta, Fort St. George, Bombay and Burma Gazettes.

Stamping of Length of Piece-goods manufactured in British India.

Stamping of length of piece-goods manufactured in British India. 12. 1. Piece-goods, such as are ordinarily sold by length or by the piece, which have been manufactured in premises which are a factory as defined in the Indian Factories Act, 1881 shall not be removed from those premises without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece. 2. If any person removes or attempts to remove any such piece-goods from any such premises without the length of each piece being stamped in the manner mentioned in sub-section (1), every such piece, and everything used for the packing or removal thereof, shall be forfeited to Her Majesty, and such person shall be punished with fine which may extend to one thousand rupees.

Supplemental Provisions.

Evidence of origin of goods imported by sea. 13. In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 18 of the Sea Customs Act 1878, as amended by this Act, be *prima facie* evidence of the place or country in which the goods were made or produced.

Costs of defence or prosecution. 14. 1. On any such prosecution as is mentioned in the last foregoing section, or on any prosecution for an offence against any of the sections of the Indian Penal Code as amended by this Act, which relate to trade, property and other marks, the Court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively. 2. Such costs shall, on application to the Court, be recoverable as if they were a fine.

Limitation of prosecution. 15. No such prosecution as is mentioned in the last foregoing section shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens.

Authority of the Governor General in Council to issue instructions as to administration of this Act. 16. 1. The Governor General in Council may, by notification in the Gazette of India and in local official Gazettes, issue instructions for observance by Criminal Courts in giving effect to any of the provisions of this Act. 2. Instructions under sub-section (1) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge or weight, which are to be recognized by Criminal Courts as permissible in the case of any goods.

Implied warranty on sale of marked goods. 17. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the buyer.

Savings. 18. 1. Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for anything in this Act, be brought against him. 2. Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14. 3. Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in British India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

Definition of piece-goods. 19. For the purposes of section 12 of this Act and clause f) of section 18 of the Sea Customs Act, 1878, as amended by this Act, the Governor General in Council may, by notification in the Gazette of India, declare what classes of goods are included in the expression 'piece-goods, such as are ordinarily sold by length or by the piece'.

Determination of character of goods by sampling. 20. 1. The Governor General in Council may make rules, for the purposes of this Act, to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure gauge or weight, for the number of samples to be selected and tested and for the selection of the samples. 2. With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under subsection (1), the Court or officer of customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the sample are to be selected. 3. The average of the results of the testing in pursuance of rules under subsection (1) or of an order under sub-section (2) shall be *prima facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods. 4. If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (1) or of an order under sub-section (2) desires that any further samples of the goods be selected and tested, they shall, on his written application and on the payment in advance by him to the Court or officer of customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules to be made by the Governor General in Council in this behalf or as, in the case of goods with respect to which provision is not made in such rules the Court or officer of customs may determine in the circumstances to be reasonable, the samples being selected in manner prescribed under subsection (1), or in sub-section (2), as the case may be. 5. The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, measure, gauge or weight, as the case may be, of the goods. 6. Rules under this section shall be made after previous publication.

Information as to commission of offences. 21. An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act.

Punishment of abetment in India of acts done out of India. 22. If any person, being within British India, abets the commission, without British India, of any act which, if committed in British India, would under this Act, or under any section of that part of Chapter XVIII of the Indian Penal Code which relates to trade, property and other marks, be an offence, he may be tried for such abetment in any place in British India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

Act No. IX of 1899.

Passed by the Governor General of India in Council. (Received the assent of the Governor General on the 3rd March, 1899.)

An Act to amend the Law relating to Arbitration.

Whereas it is expedient to amend the law relating to arbitration by agreement without the intervention of a Court of Justice; It is hereby enacted as follows:

Short title, extent and commencement. 1. 1. This Act may be called the Indian Arbitration Act, 1899. 2. It extends to the whole of British India; and 3. It shall come into force on the first day of July, 1899.

Application. 2. Subject to the provisions of section 23, this Act shall apply only in cases where, if the subject-matter submitted to arbitration were the subject of a suit, the suit could, whether with leave or otherwise, be instituted in a Presidency-town: Provided that the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare this Act applicable in any other local area as if it were a Presidency-town.

Exclusion of certain enactments in certain cases where Act applies. 3. The last thirty-seven words of section 21 of the Specific Relief Act, 1877, and sections 523

to 526 of the Code of Civil Procedure shall not apply to any submission or arbitration to which the provisions of this Act for the time being apply: Provided that nothing in this Act shall affect any arbitration pending in a Presidency-town at the commencement of this Act or in any local area at the date of the application thereto of this Act as aforesaid, but shall apply to every arbitration commenced after the commencement of this Act or the date of the application thereof, as the case may be, under any agreement or order previously made: Provided, also, that nothing in this Act shall affect the provisions of the Indian Companies Act, 1882, relating to arbitration.

Definitions. 4. In this Act, unless there is anything repugnant in the subject or context: a) "The Court" means, in the Presidency-towns, the High Court, and, elsewhere, the Court of the District Judge; and b) "Submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

Submission to be irrevocable except by leave of Court. 5. A submission, unless a different intention is expressed therein, shall be irrevocable, except by leave of the Court.

Provisions implied in submissions. 6. A submission, unless a different intention is expressed therein, shall be deemed to include the provisions set forth in the first schedule, in so far as they are applicable to the reference under submission.

Reference to arbitrator to be appointed by third person. 7. The parties to a submission may agree that the reference shall be to an arbitrator or arbitrators to be appointed by a person designated therein. Such person may be designated either by name or as the holder for the time being of any office or appointment.

Illustration.

The parties to a submission may agree that any dispute arising between them in respect of the subject-matter of the submission shall be referred to an arbitrator to be appointed by the Bengal Chamber of Commerce, or, as the case may be, to an arbitrator to be appointed by the President for the time being of the Bengal Chamber of Commerce.

Power for the Court in certain cases to appoint an arbitrator, umpire or third arbitrator. 8. 1. In any of the following cases: a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; b) If an appointed arbitrator neglects or refuses to act, or is incapable of acting, or dies, or is removed, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy; c) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him; d) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, or is removed, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy: Any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in appointing an arbitrator, umpire or third arbitrator. **2.** If the appointment is not made within seven clear days after the service of the notice, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator, umpire or third arbitrator, who shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties.

Power for parties in certain cases to supply vacancy. 9. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed therein: a) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies or is removed, the party who appointed him may appoint a new arbitrator in his place; b) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with a written notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent: Provided that the Court may set aside any appointment made in pursuance of clause (b) of this section.

Powers of arbitrator. 10. The arbitrators or umpire acting under a submission shall, unless a different intention is expressed therein: a) Have power to administer oaths to the parties and witnesses appearing; b) Have power to state a special case for the opinion of the Court on any question of law involved; and c) Have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Award to be signed and filed. 11. 1. When the arbitrators or umpire have made their award, they shall sign it and shall give notice to the parties of the making and signing thereof and of the amount of the fees and charges payable to the arbitrators or umpire in respect of the arbitration and award. 2. The arbitrators or umpire shall, at the request of any party to the submission or any person claiming under him, and upon payment of the fees and charges due in respect of the arbitration and award, and of the costs and charges of filing the award, cause the award, or a signed copy of it, to be filed in the Court; and notice of the filing shall be given to the parties by the arbitrators or umpire. 3. Where the arbitrators or umpire state a special case under section 10, clause (b), the Court shall deliver its opinion thereon; and such opinion shall be added to, and shall form part of, the award.

Power for Court to enlarge time for making award. 12. The time for making an award may, from time to time, be enlarged by order of the Court, whether the time for making the award has expired or not.

Power to remit award. 13. 1. The Court may, from time to time, remit the award to the reconsideration of the arbitrators or umpire. 2. Where an award is remitted under sub-section (1), the arbitrators or umpire shall, unless the Court otherwise directs, make a fresh award within three months after the date of the order remitting the award.

Power to set aside award. 14. Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set aside the award.

Award when filed to be enforceable as a decree. 15. 1. An award on a submission, on being filed in the Court in accordance with the foregoing provisions, shall (unless the Court remits it to the reconsideration of the arbitrators or umpire, or sets it aside) be enforceable as if it were a decree of the Court. 2. An award may be conditional or in the alternative.

Illustration.

A dispute concerning the ownership of a diamond ring is referred to arbitration. The award may direct that the party in possession shall pay the other party Rs. 1,000, the said sum to be reduced to Rs. 5 if the ring is returned within fourteen days.

Power to remove arbitrator or umpire. 16. Where an arbitrator or umpire has misconducted himself, the Court may remove him.

Costs. 17. Any order made by the Court under this Act may be made on such terms as to costs or otherwise as the Court thinks fit.

Forms. 18. The forms set forth in the second schedule, or forms similar thereto, with such variations as the circumstances of each case require, may be used for the respective purposes there mentioned, and, if used, shall not be called in question.

Power to stay proceedings where there is a submission. 19. Where any party to a submission to which this Act applies, or any person claiming under him, commences any legal proceedings against any other party to the submission, or any person claiming under him, in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other steps in the proceedings, apply to the Court to stay the proceedings; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Power for High Court to make rules. 20. The High Court may make rules consistent with this Act as to: a) The filing of awards and all proceedings consequent thereon or incidental thereto; b) The filing and hearing of special cases and all proceedings consequent thereon or incidental thereto; c) The transfer to Presidency

Courts of Small Causes for execution of awards filed, where the sum awarded does not exceed two thousand rupees; d) The staying of any suit or proceeding in contravention of a submission to arbitration; and e) Generally, all proceedings in Court under this Act.

Amendment of section 21, Act I, 1877. 21. In section 21 of the Specific Relief Act, 1877, after the words "Code of Civil Procedure" the words and figures "and the Indian Arbitration Act, 1899," shall be inserted, and for the words "a controversy" the words "present or future differences" shall be substituted.

Crown to be bound. 22. The provisions of this Act shall be binding on the Crown.

Special provision as to application of Act to Rangoon. 23. 1. This Act shall apply within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon in cases where, if the subject-matter submitted to arbitration were the subject of a suit, the suit could, whether with leave or otherwise, be instituted within those local limits. 2. For the purposes of this Act, the local limits aforesaid shall be deemed to be a Presidency-town and the Recorder of Rangoon shall have all the powers of a High Court.

The First Schedule.

(See section 6.)

Provisions to be implied in Submissions.

I. If no other mode of reference is provided, the reference shall be to a single arbitrator
II. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

III. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may, from time to time, enlarge the time for making the award.

IV. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

V. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire, by any writing signed by him, may, from time to time, enlarge the time for making his award.

VI. The parties to the reference, and all persons claiming through them respectively, shall, subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

VII. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath.

VIII. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

IX. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom, and in what manner, those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

The Second Schedule.

(See section 18.)

Form I. Submission to single arbitrator.

In the matter of the Indian Arbitration Act, 1899:

Whereas differences have arisen and are still subsisting between A. B. of _____ and C. D. of _____ concerning _____ ;

Now we, the said A. B. and C. D., do hereby agree to refer the said matters in difference to the award of X. Y.

(Signed) A. B.
C. D.

Dated the _____, 189 .

Form II. Submission of particular dispute to single arbitrator.

In the matter of the Indian Arbitration Act, 1899:

Whereas differences have arisen and are still subsisting between A. B. of _____ and
C. D. of _____ concerning _____ ;
Now we, the said A. B. and C. D., do hereby agree to refer the said matters in difference
to the award of X. Y.

(Signed) A. B.
C. D.

Dated the _____, 189 .

Form III. Appointment of single arbitrator under agreement to refer future differences to arbitration.

In the matter of the Indian Arbitration Act, 1899:

Whereas, by an agreement in writing, dated the _____ day of _____,
18, _____, and made between A. B. of _____ and C. D. of _____, it is provided
that differences arising between the parties thereto shall be referred to an arbitrator as therein
mentioned;

And whereas differences within the meaning of the said provision have arisen and are
still subsisting between the said parties concerning _____ ;

Now, we, the said parties, A. B. and C. D., do hereby refer the said matters in difference
to the award of X. Y.

(Signed) A. B.
C. D.

Dated the _____, 189 .

Form IV. Enlargement of time by arbitrator by endorsement on submission.

In the matter of the Indian Arbitration Act, 1899, and an arbitration between A. B.
of _____ and C. D. of _____ :

I hereby enlarge the time of making my award in respect of the matters in difference
referred to me by the within (or above) submission until the _____ day of _____
189 .

(Signed) X. Y.
Arbitrator.

Dated the _____, 189 .

Form V. Special case.

In the matter of the Indian Arbitration Act, 1899, and an arbitration between A. B.
of _____ and C. D. of _____ :

The following special case is, pursuant to the provisions of section 10, clause (b), of the said
Act, stated for the opinion of the _____ :

(Here state the facts concisely in numbered paragraphs.)

The questions of law for the opinion of the said Court are:

First, whether.....

Secondly, whether.....

(Signed) X. Y.,
Arbitrator.

Dated the _____, 189 .

Form VI. Award.

In the matter of the Indian Arbitration Act, 1899, and an arbitration between A. B.
of _____ and C. D. of _____ :

Whereas in pursuance of an agreement in writing dated the _____ day of _____,
_____, 189 , and made between A. B. of _____ and C. D.
of _____, the said A. B. and C. D. have referred to me, X. Y., the
matters in difference between them concerning _____ (or as the
case may be);

Now I, the said X. Y., having duly considered the matters submitted to me, do hereby
make my award as follows:

I award

1) that.....

2) that.....

(Signed) X. Y.,
Arbitrator.

Dated the _____, 189 .

Ceylon.

Introduction.

The Colony of Ceylon includes in addition to the Island of Ceylon the islands of the Maldivé Archipelago, situated about 400 miles west of Ceylon, and made up of seventeen groups of islets¹⁾.

History and government.²⁾

One of the earliest authentic facts in the history of Ceylon is an invasion of the island from the mainland, about 543 B. C., by an Indian prince, Vijaya, who succeeded in establishing himself as sole ruler of the country. During his reign and that of his successors the civilization of India was brought into Ceylon. Buddhism was introduced in the third century B. C.

In 1505 the Portuguese adventurer, Almeida, landed at Colombo, and in 1517 a Portuguese factory was established in Ceylon. The Portuguese gradually acquired dominion over the whole West coast and over parts of the East coast of the island. In 1602 the Dutch made an alliance with the king of Kandy, and in 1638—39 a Dutch expedition destroyed a number of Portuguese ports. In 1658 the Portuguese were finally driven from the island.

The island was taken by the English from the Dutch in 1795—96, and at first placed under the jurisdiction of the East India Company. Under the treaty of Amiens the seaboard of Ceylon was given to England (1802). English expeditions were sent into the Kandyan territory, and under a convention of 2d March, 1815, the sovereignty over the Kandyan territory was acquired by England, the inhabitants in return being guaranteed civil and religious liberty, and the preservation of the existing laws.

The executive power is vested in a Governor, assisted by an executive council of six members. The legislative power is vested in a legislative council of seventeen members, being the members of the executive council, certain other office holders, and eight nominated unofficial members³⁾.

Law in force.⁴⁾

A number of distinct systems of law are in force in Ceylon. The Roman-Dutch law, as modified by local enactments and customary law, is the territorial law in force in the Maritime Provinces, and also applies to all the inhabitants of the other Provinces of the Island, except where a personal law is applicable⁵⁾. "The whole of the Dutch law as it prevailed in Holland more than a century ago was never bodily imported into this country. We have only adopted and acted upon so much of it as suited our circumstances, such as the law of inheritance in the Maritime Provinces, community of property, law of mortgage, etc."⁶⁾.

The inadequacy of the Roman-Dutch law in regard to commercial matters was early felt, and even prior to the adoption of the Ordinances of 1852 and 1866 English judges sitting in Ceylon imported into the law of the Island a number of principles of the English commercial law. As early as 1821 Giffard, C. J., said: "It fortunately happens that the great commercial code called the custom of merchants has its foundation in this very law (i. e. Roman-Dutch law); it is principally

¹⁾ The Laccadive Islands are under the administration of the Government of India. —

²⁾ On the history of Ceylon see further: Tennent, *Ceylon; an account of the island, physical, historical, and topographical*; Schmidt, *Ceylon*; Philalethes, *History of Ceylon from the earliest period to 1815*; Lucas, *Historical geography of the British colonies*, Vol. 1, pp. 65—89. —

³⁾ Letters patent, April 1831. Stat. R. & O. Rev. 1904, Vol. 1, "Ceylon." — ⁴⁾ In addition to the standard treatises on Ceylon law, see: Perera, *The sources of our laws* (in *Ceylon Law Review*, vol. 1, pp. 5—8); Modder, *Kandyan Law* (in *Ceylon Law Review*, Vol. 1, pp. 24—28); Nell, *An examination of the special Laws of the Mohammedans* (in *Beven & Mills' Legal Miscellany*, 1867). — ⁵⁾ Burge, *Colonial and foreign law*, Vol. 1, p. 187. — ⁶⁾ Per Dias, J., in *Wyeyekoon v. Gunewardene*, (1892), 1 S. C. R. 147.

composed of the rules laid down by the consent and practice by the merchants of Holland, when they had almost the whole commerce of Europe in their hands, and these rulings having under the denomination of the custom of merchants been adopted and embodied into the commercial law of England, we look upon every decision of the Courts of Westminster upon commercial subjects as a commentary upon the Dutch commercial law, the law which we are bound to observe¹⁾.”

The Malabar inhabitants of the Northern Province are governed by the Thesawalemai²⁾. Where the Thesawalemai is silent the Roman-Dutch law governs³⁾.

The Mohammedans are governed by the Mohammedan laws as adopted by the Code of 5th August, 1806, and applied to the Mohammedans in the Kandyan Provinces by the Ordinance of 1852⁴⁾. As to the extent to which Mohammedan law has been adopted, it was said by Berwick, D. J.: “While it is true, in a sense, that Mohammedan law is part of the common law of this country, it is not to be supposed that the whole immense body of Mohammedan jurisprudence is law here, or that the dealings of Moormen in Ceylon are solely or even principally regulated by it. Only such parts of the system are law here as have been specially introduced into the Island, either by express legislation or by ancient continuous and inveterate custom or usage, which is all the Charter of 1801 meant. It is in nearly the same position in this respect as the common and statute law of England here, and equally with pure English law must give place to the ordinary law of the country, which in the last resort is the Roman-Dutch, whenever there is no inveterate and established practice to the contrary, applicable to the particular case⁵⁾.” Where the Mohammedan Code of 1806 contains no provisions the Roman-Dutch law applies⁶⁾.

The Kandyan law applies to natives in the Kandyan Provinces⁷⁾. When the Kandyan law is silent the Roman-Dutch law applies⁸⁾. The customary laws of the Mukkuvars of Batticaloe were never interfered with by the Dutch courts⁹⁾, and were given a limited application by the English. They appear to have been abrogated by Ordinance in 1876¹⁰⁾.

The law of England in respect of mercantile matters is expressly adopted, and is general in its application¹¹⁾. The age of majority is fixed at twenty-one years¹²⁾. Matrimonial property rights are governed by the Matrimonial Rights and Inheritance Ordinance, 1876¹³⁾. Powers of attorney are regulated by the Powers of Attorney Ordinance, 1902.¹⁴⁾ Contracts of guarantee must be in writing¹⁵⁾. Merchandise marks are governed by the Merchandise Marks Ordinance, 1888¹⁶⁾.

¹⁾ Ram. 1820, 19. — ²⁾ The Thesawalemai is applicable to the Tamils of the Mannár District. — *Marisal v. Savari*, (1878), 1 S. C. C. 9. The authority of the English translation of the Thesawalemai, as printed in the *Revised Laws*, is sustained in *Chapapathy Kurukal v. Sivaprakasapillai*, (1905), 1 Bal. 108; sub nom. *Sabapathi v. Sivaprakasam*, (1905), 8 N. L. R. 62. The matrimonial property rights of Tamils are governed by Ord. No. 1 of 1911. — ³⁾ *Puthatampy v. Mailvakanam*, (1897), 3 N. L. R. 42. — ⁴⁾ Ord. No. 5 of 1852, § 10. Before this Ordinance Kandyan law governed the Moors in Kandyan territory. — (1849), Aust. 99. But cp. *Saiboo v. Ahemet*, (1851), Ram. 1843, 163. — ⁵⁾ (1873), *Gren. III.* 28. — ⁶⁾ *Saiboo Tamby v. Ahemet*, (1851), Ram. 1843, 163; *Casim v. Peria Tamby*, (1896), 2 N. L. R. 200; *Ibrahim Sayibu v. Muhamadu*, (1898), 3 N. L. R. 116. The question as to whether the Malays are governed by the Mohammedan Code of 1806 is discussed, but not decided, in *Sewette Umma v. Mohideen Rawter*, (31st August, 1898), cited in Jayewardene, *Roman-Dutch law*, p. 32. See also *Nell, An examination of the special laws of the Mohammedans* (in *Beven & Mills' Legal Miscellany*, 1867. — ⁷⁾ This is, however, subject to the restrictions imposed by Ord. No. 5 of 1852, §§ 7—9, reprinted in full, *infra*. — ⁸⁾ Ord. No. 5 of 1852, § 5. — ⁹⁾ Jayewardene, l. c., p. 4, citing *Morg. Dig.* § 382; 8 S. C. C. 40. — ¹⁰⁾ *Burge*, l. c., p. 187. — ¹¹⁾ Ords. No. 5 of 1852 and No. 22 of 1866, reprinted in full *infra*. — ¹²⁾ From and after the passing of this Ordinance all persons when they shall attain or who have already attained the full age of twenty-one years shall be deemed to have attained the legal age of majority, and, except as is hereinafter excepted, no person shall be deemed to have attained his majority at an earlier period, any law or custom to the contrary notwithstanding. Nothing herein contained shall extend or be construed to prevent any person under the age of twenty-one years from attaining his majority at an earlier period by operation of law. — Ord. No. 7 of 1865, §§ 1, 2. — ¹³⁾ Ord. No. 15 of 1876. The principal provisions of this Ordinance are as follows: Whenever a woman marries, after the proclamation of this Ordinance, a man of different race or nationality from her own, she shall be taken to be of the same race and nationality as her husband for all the purposes of this Ordinance, so long as the marriage subsists and until she marries again. Save as aforesaid, this Ordinance shall not apply to Kandyans or Mohammedans, or to Tamils of the Northern Province who are or may become subject to the Thesawalemai. The respective matrimonial rights of every husband and wife domiciled or resident in this Island,

and married after the proclamation of this Ordinance, in, to, or in respect of moveable property shall, during the subsistence of such marriage and of such domicile or residence, be governed by the provisions of this Ordinance. The respective matrimonial rights of every husband and wife, married after the proclamation of this Ordinance, in, to, or in respect of any immoveable property situate in this Island shall, during such marriage, be governed by the provisions of this Ordinance. There shall be no community of goods between husband and wife, married after the proclamation of this Ordinance, as a consequence of marriage, either in respect of moveable or immoveable property. Any immoveable property to which any woman, married after the proclamation of this Ordinance, may be entitled at the time of her marriage, or may become entitled during her marriage, shall, subject and without prejudice to the trusts of any will or settlement affecting the same, belong to the woman for her separate estate, and shall not be liable for the debts or engagements of her husband, unless incurred for or in respect of the cultivation, upkeep, repairs, management, or improvement of such property, or for or in regard to any charges, rates, or taxes imposed by law in respect thereof, and her receipts alone or the receipts of her duly authorized agent shall be a good discharge for the rents, issues, and profits arising from or in respect of such property. Such woman shall, subject and without prejudice to any such trusts as aforesaid, have as full power of disposing of and dealing with such property, by any lawful act inter vivos with the written consent of her husband, but not otherwise, or by last will without such consent, as if she were unmarried. The wages and earnings of any married woman, whether married before or after the proclamation of this Ordinance, which may be acquired or gained by her after the proclamation of this Ordinance in any employment, occupation, or trade in which she is engaged or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, shall be deemed and taken to be her separate property, independent of the debts, control, or engagements of her husband, and she shall have as full power of dealing with and disposing of the same or any investment thereof as if she were unmarried, and her receipts alone shall be a good discharge for such wages, earnings, money, and property and the principal and interest of any investments thereof. All jewels and all personal or household ornaments and wearing apparel belonging to a woman, married after the proclamation of this Ordinance, at the time of her marriage, and also all jewels, personal ornaments, and apparel suitable in respect of value to her rank and condition of life, which she may acquire during marriage, whether by gift from her husband or otherwise, and all tools, implements, and appliances belonging to her during marriage, which may be requisite for the carrying on of any employment or trade in which she may be engaged separately from her husband, and all implements of husbandry, machinery, live and dead stock belonging to her during marriage and bona fide kept upon and employed for the cultivation or proper uses of any immoveable property belonging to her for her separate estate, shall, subject and without prejudice to the trusts and provisions of any will or valid settlement affecting the same, belong to the woman for her separate estate independent of the debts, control, and engagements of her husband, and she shall have as full power of disposing of and dealing with the same by any lawful act inter vivos with the consent of her husband, or by last will without such consent, as if she were unmarried. If in any case, in which the consent of a husband is required by this Ordinance for the valid disposition of or dealing with any property by the wife, the wife shall be deserted by her husband or separated from him by mutual consent, or he shall have lain in prison under the sentence or order of any competent court for a period exceeding two years, or if he shall be a lunatic or idiot, or his place of abode shall be unknown, or if his consent is unreasonably withheld, or the interest of the wife or children of the marriage require that such consent should be dispensed with, it shall be lawful for the wife to apply by petition to the District Court of the district in which she resides, or in which the property is situate, for an order authorizing her to dispose of or deal with such property without her husband's consent; and such court may, after summary inquiry into the truth of the petition, make such order, and that subject to such conditions and restrictions, as the justice of the case may require: whereupon such consent shall, if so ordered and subject to the terms and conditions of such order, become no longer necessary for the valid disposition of or dealing with such property by such woman. Every such petition shall require a stamp of ten rupees, but no further stamps shall be required for any legal proceedings under this section. Such order shall be subject to appeal to the Supreme Court in the same manner and subject to the same rules and procedure as interlocutory orders of District Court. Provided, however, that in any case, when a separation a mensa et thoro has been decreed by a competent court, the consent of the husband shall not be necessary to enable the wife, so separated, to deal with or dispose of her property. It shall be lawful for any husband or wife, whether married before or after the proclamation of this Ordinance, notwithstanding the relation of marriage and notwithstanding the existence of any community of goods between them, to make or join each other in making, during the marriage, any voluntary grant, gift, or settlement of any property, whether moveable or immoveable to, upon, or in favour of the other; but all property so granted, gifted, or settled, and all acquisitions made by a husband, or wife, out of or by means of the moneys or property of the other, shall, except, as otherwise provided by section 11, be subject to the debts and engagements of each spouse in the same manner and to the same extent as if such grant, gift, settlement, or acquisition had not been made or occurred. Whenever any question shall arise between any woman, married after the proclamation of this Ordinance, or any person claiming under her and any creditor or alienee of her husband, as to the mode and time of the

acquisition of any property claimed by such woman, it shall be incumbent upon such woman or person claiming under her to prove in what manner and at what time she became entitled to such property. All moveable property to which any woman, married after the proclamation of this Ordinance, shall be entitled at the time of her marriage or may become entitled during her marriage, shall, subject and without prejudice to any settlement affecting the same, and except so far as is by this Ordinance otherwise provided, vest absolutely in her husband. — Ibid. §§ 2, 6—14, 19. Any deposit in the Ceylon Savings Bank, made in the name of a married woman, or in the name of a woman who shall marry after such deposit, shall be deemed to be the separate property of such woman, and shall be accounted for and paid to her as if she were an unmarried woman. Provided that nothing herein contained shall, as against the creditors of a husband, give protection to any deposit made by him in fraud of such creditors, and that any moneys so deposited may be followed as if this section had not been passed. — Ord. No. 19 of 1909, § 2. A married woman derives no additional contractual capacity from the fact that her husband is imprisoned. — *Gunasekere v. Hamine*, (1905), 4 Bal. 90. The matrimonial property rights of Tamils are governed by Ord. No. 10 of 1911. — 14) Ord. No. 4 of 1902. The principal provisions of this Ordinance are as follows. For purposes of this Ordinance, and unless there be any thing in the subject or context repugnant to such construction: "Power of attorney" shall include any written power or authority other than that given to proctor or law agent, given by one person to another to perform any work, do any act, or carry on any trade or business, and executed before two witnesses, or executed before or attested by a notary public or by a justice of the peace, Registrar, Deputy Registrar or by any Judge or Magistrate, British consul or vice-consul or representative of His Majesty; and "Attorney" shall include every person holding such power of attorney; "Registrar-General" shall include an Acting Registrar-General. Any attorney desiring to have his power of attorney registered under this Ordinance shall be entitled to have the same so registered, and shall for that purpose produce the same to the Registrar-General, together with a copy thereof certified by a notary public to be a true copy, and shall make an affidavit to the effect that to the best of his knowledge and belief such power of attorney is genuine and still in force. And the Registrar-General shall file and register the power of attorney, and after satisfying himself of the correctness of such copy, shall endorse upon it and upon the power of attorney a certificate signed by him stating the fact of such registration and the date thereof together with a reference to the volume and folio wherein such registration is recorded and the power of attorney is filed, and shall return such copy to the person producing the same. Such registration shall be recorded in a book to be kept in the form prescribed in Schedule A. hereto. In the event of the cancellation or revocation of any registered power of attorney, or where any attorney ceases to act under such power of attorney, the grantor or attorney, if desirous of having such cancellation or revocation registered, shall be entitled to have the same so registered, and shall for that purpose notify such cancellation or revocation to the Registrar-General, with an affidavit verifying such fact, and shall also cause publication of such notification to be made in the English language in the *Ceylon Government Gazette* and in three issues of at least three daily papers published in the English language in Colombo; but until such notification and publication the grantor shall be held liable and bound by all acts of his attorney. Provided that nothing in this section shall be construed to affect any power of attorney which shall cease or become void by operation of law, or to affect or prejudice the operation of any clause, proviso, or condition contained in any power of attorney dealing with or touching or requiring the giving of notice by the grantor or attorney to any person dealing with such attorney, and the effects and liabilities, if any, resulting from the failure to observe and carry out the provisions of such clause, proviso, or condition. The Registrar-General shall register every notification of cancellation or revocation made to him under section 4, and endorse upon the power of attorney a certificate signed by him stating the fact of such cancellation or revocation and the date of such endorsement, with a reference to the volume and folio where such cancellation or revocation is recorded and the notification is filed. Such cancellation or revocation shall be recorded in a book to be kept in the form prescribed in Schedule A hereto. The Registrar-General shall carefully file and preserve all powers of attorney and all notifications of cancellation or revocation received by him, together with the affidavits relating thereto, with convenient lists and indexes thereof. All such records shall be opened to inspection of any person on an application in writing to be made by such person to the Registrar-General for that purpose. The Registrar-General shall, at the request of any person applying in writing for the same, issue a copy, certified by him to be a true copy, of any power of attorney filed in his office under section 3. To such certified copy shall be added a certificate signed by the Registrar-General stating the date of registration of the power of attorney, and by whom the power of attorney was produced for such registration, together with the date of registration of cancellation or revocation, if any, of the power of attorney, and by whom the notification of such cancellation or revocation was given. In any judicial proceeding every certified copy issued by the Registrar-General as provided in section 7 of this Ordinance shall be received as *prima facie* evidence of the execution by the person by whom it purports to have been executed of the original power of attorney, and of the contents of such original power of attorney, notwithstanding that the original power of attorney be not produced, provided that if in any case such person denies the execution of such power, the certified copy thereof shall not be accepted as *prima facie* evidence of the execution of the original. The following fees shall be payable to the Registrar-General under this Ordinance, and shall be paid in

Courts and procedure.

The judicial system comprises a Supreme Court, District Courts, Courts of Requests, Police Courts, and Village Tribunals. The Supreme Court consists of a Chief Justice and three Puisne Justices, and is the only superior court of record in Ceylon¹⁾. The Supreme Court has certain original criminal jurisdiction and appellate jurisdiction for the correction of errors committed by any original Court, and sole and exclusive cognizance by way of appeal and review of all causes, suits, actions, prosecutions, matters, and things of which such original Court may have taken cognizance²⁾, and jurisdiction in admiralty under the Colonial Courts of Admiralty Act, 1890³⁾.

The District Courts consist of a single Judge, and are courts of record with original jurisdiction in all civil, criminal, revenue, matrimonial⁴⁾, insolvency, and testamentary matters, save in cases where the Supreme Court has original jurisdiction, and jurisdiction over the persons and estates of lunatics, minors, and wards, and over trust estates⁵⁾. An appeal lies to the Supreme Court⁶⁾.

The Courts of Requests consist of a Commissioner of Requests, and are courts of record, having original jurisdiction in all actions in which the debt or demand does not exceed rs. 300, and in which the party or parties defendant are resident within the jurisdiction of the Court, or in which the cause of action arose in such jurisdiction, and in hypothecary actions, and actions relating to land where the value of the right involved does not exceed rs. 300. But the Courts of Requests have no jurisdiction in actions for breach of promise of marriage, in matrimonial causes or in actions for criminal conversation, or for seduction, breach of promise of marriage or in matrimonial causes⁷⁾. The Courts of Requests have jurisdiction in cases of claims for wages regardless of amount⁸⁾. An appeal lies to the Supreme Court⁹⁾.

Village Tribunals have been established in the chief headman's division, and invested with civil and criminal jurisdiction. The civil jurisdiction extends to cases where the debt or demand does not exceed rs. 20, and the defendant is a resident of the subdivision, and to actions affecting immoveables where the right or interest involved does not exceed the same amount. By consent of both parties the village tribunals may exercise jurisdiction in respect of immoveables where the right or interest does not exceed in value rs. 100¹⁰⁾. The Police Courts and justices of the peace exercise only criminal jurisdiction.

Civil procedure is governed by a code similar to the Indian Civil Procedure Code¹¹⁾.

An appeal lies to the Privy Council from any final judgment of the Supreme Court, where the matter in dispute on the appeal amounts to or is of the value of rs. 5000, or where the appeal involves directly or indirectly some claim or question to or respecting property, or some civil right amounting to or of the value of rs. 5000, and at the discretion of the Supreme Court from any other judgment of the Court, whether final or interlocutory. Application for leave to appeal must be made within

stamps, to be affixed, in the case of the registration of any power of attorney or of any notification of cancellation or revocation of any power of attorney, to the power of attorney or the notification respectively filed by the Registrar-General, and in all other cases to the document in respect of which they are payable:

| | Rs. | C. |
|--|-----|----|
| For the registration of any power of attorney | 2 | 50 |
| For the registration of any notification of cancellation or revocation of any registered power of attorney | 1 | 0 |
| For every application to inspect the records | 1 | 0 |
| For every application for a certified copy of a registered power of attorney | 1 | 0 |
| For every certified copy issued under section 5, per folio of 120 words | 0 | 25 |

— ¹⁵⁾ Ord. No. 7 of 1840, § 21 (1). This section refers to a promise to answer for a debt or default of another for which that other remains liable. — *Rasool v. Pakeer*, (1905), 1 Leemb. 13. Only the signature of the party sought to be rendered liable on such contract is required. — *Alston, Scott & Co. v. Sinne Lebbe Markar*, (1856), 1 Lor. 165. The consideration must appear expressly or by necessary implication. — *Sathappen v. Andiappen*, (1888), 8 S. C. C. 167; following *Bastian v. d'Espagnac*, S. C. Civ. Min., 22d March, 1881. Money paid in pursuance of a contract void under this section, and not performed, is recoverable, — (1873), Gren. II, 34; following *Morg. Dig.* § 82. — ¹⁶⁾ Ord. No. 13 of 1888, as amended by Ord. No. 15 of 1908. These Ordinances adopt the provisions of the Imperial Merchandise Marks Act.

¹⁾ Ord. No. 1 of 1889, § 8. — ²⁾ Ibid. § 21. — ³⁾ 53 & 54 Vic. c. 27. — Ord. No. 2 of 1891, § 2. —

⁴⁾ Cp. *Le Mesurier v. Le Mesurier*, (1895) A. C. 517. — ⁵⁾ Ord. No. 1 of 1889, § 64. — ⁶⁾ Ibid. § 75. — ⁷⁾ Ord. No. 12 of 1895, § 4. — ⁸⁾ Ord. No. 1 of 1889, § 8. — ⁹⁾ Ibid. § 80. — ¹⁰⁾ Ord. No. 24 of 1889, §§ 26, 28. — ¹¹⁾ Ord. No. 2 of 1889, as amended.

thirty days from the date of the judgment appealed against. Security in a sum not exceeding rs. 3000 must be given by the appellant within three months. Where the judgment appealed from requires the appellant to pay money or perform a duty the Court has power when granting leave to appeal to direct that the judgment be carried into execution provided the respondent furnish security. Similarly, the Court may stay execution, the appellant furnishing security¹⁾.

The limitation of suits is governed by the Ordinance of 1871²⁾.

Bibliography.

Collections of Ordinances.

Legislative acts, 1796—1852. Colombo. 1853—1854.

Legislative enactments of Ceylon, in force 12th January, 1870. London. 1874.

Legislative enactments, 1870—1877. Colombo. 1875—1878.

Revised edition of the legislative enactments of Ceylon, 1707—1911. Colombo. 1907—1911³⁾.

Epitome of proclamations, notifications, etc., 1899—1902. Colombo. 1900—1903.

Reports of Cases.⁴⁾

| Name of reports. | No. of vols. | Period. | Method of citation. |
|---|--------------|-------------|---------------------|
| Ramanathan | 1 | 1820—33 | Ram. 1820 |
| Austin | 1 | 1833—59 | Aust. |
| Beven & Mills' Legal Miscellany ⁵⁾ | 1 | 1820—67 | Beven & Mills |
| Lorenz's Namptissement Cases | 1 | 1830—81 | Lor. N. C. |
| Marshall | 1 | 1833—36 | Marshall |
| Morgan's Digest | 2 | 1833—55 | Morg. Dig. |
| Creasy | 1 | 1837—76 | Creasy |
| Ramanathan | 1 | 1843—55 | Ram. 1843 |
| Nell | 1 | 1845—55 | Nell |
| Beling's Police Court | 1 | 1846—69 | Beling |
| Murray | 1 | 1846—47 | Murray |
| Legal Miscellany ⁶⁾ | 1 | 1852—53 | Leg. Misc. |
| Lorenz | 1 | 1856—59 | Lor. |
| Joseph & Beven | 1 | 1859—60 | Jos. & Bev. |
| Beven & Siebel | 1 | 1859—67 | Bev. & Sieb. |
| Ramanathan | 2 | 1860—68 | Ram. 1860 |
| Solomons | 1 | 1861—67 | Sol. |
| Crowther | 1 | 1863 | Crow. |
| Fernando | 1 | 1865—76 | Fern. |
| Vanderstraaten | 1 | 1869—71 | Van. |
| Grenier | 3 pts. | 1872—74 | Gren. |
| Ramanathan | 1 | 1872, 75—76 | Ram. 1872 |
| Browne | 3 | 1872—1902 | Br. |
| Supreme Court Circular | 9 | 1878—91 | S. C. C. |
| Ramanathan | 1 | 1877 | Ram. 1877 |
| Wendt | 1 | 1882—83 | Wendt |
| Ceylon Law Journal | 1 | 1885—92 | C. L. J. |
| Balasingham | 5 | 1887—1911 | Bal. |
| Ceylon Law Reports | 3 | 1888—97 | C. L. R. |
| Supreme Court Reports | 3 | 1892—94 | S. C. R. |
| Perera | 1 | 1892 | Per. |
| Koch | 1 | 1899 | Koch |
| Ceylon Law Review | 5 | 1899—1906 | Tamb. |
| New Law Reports | 15 | 1874—1912 | N. L. R. |
| Leembruggen | 2 | 1905—06 | Leemb. |
| Appeal Court Reports | 5 | 1907—1912 | A. C. R. |

¹⁾ Ord. No. 31 of 1909. — ²⁾ Ord. 22 of 1871. The provisions of this Ordinance, in so far as they relate to matters within the scope of this work, are as follows: It shall be

³⁾ Declared an official compilation of the Ordinances therein contained. — Ord. No. 27 of 1908. The text of the Acts reprinted herein is based on this edition. — ⁴⁾ There are no judgments prior to 1820. A number of treatises, such as Mutukisna's *Thesavalene*, Brito's *Mukkuna law* and Siebel's *Liability of estate owners*, contain reports of cases. — ⁵⁾ Edited by Beven and Mills. — ⁶⁾ Edited by Mr. (afterwards Sir) Richard Morgan.

Digests.

- Morgan, O. W. C., and Conderlag, W. M.:** Digest, 1833—1842. Colombo. 1862.
Tiruvillangam: Digest of cases, 1820—1895. Colombo. 1896—1902.
Same: Digest of cases in Supreme Court Circular, 1878—1891. Colombo. 1894.
Balasingham, K.: Digest, 1895—1908. Colombo. 1897—1909.

Legal Periodicals.

- Legal Miscellany.** 1853.
Beven and Mills' Legal Miscellany.
Ceylon Law Review 1899—1912.

Treatises.

- Arunachalam, B.:** Digest of the civil law of Ceylon. Colombo. 1910.
Armour: Grammar of the Kandyan law¹).
Balasingham, K.: Institutes of the laws of Ceylon. 1906—12.
Brito: Mukkuva law.
Isaaksz (Claas): Country laws, a description of the established customs, usages, and institutions according to which civil cases are decided among the Malabar or Tamil inhabitants of the Province of Jaffna. Jaffna. 1841.
Jayewardene, A. St. V.: The Roman-Dutch law as it prevails in Ceylon. Colombo. 1901.
Le Mesurier, C. J. R., and Pa'nabokke, T. B.: Niti-Nighanduwa, or vocabulary of law. Colombo. 1880.
Modder, Frank: Manual of Kandyan law. Galle. 1901.
Mutukisna, Henry Francis: New edition of the Thesawalene, or laws and customs of Jaffna. Colombo. 1862.
Same: The Tésawalamai, or laws and customs of the Malabars of Jaffna. Colombo. 1891.
Nell, Louis: The Mohammedan laws of Ceylon. Colombo. 1873.
Pereira, J. C. W.: Institutes of the laws of Ceylon. Colombo. 1901—1904.

lawful for any person who shall have been dispossessed of any immoveable property otherwise than by process of law, to institute proceedings against the person dispossessing him at any time within one year of such dispossession. And on proof of such dispossession within one year before action brought, the plaintiff in such action shall be entitled to a decree against the defendant for the restoration of such possession without proof of title. Provided that nothing herein contained shall be held to affect the other requirements of the law as respects possessory cases. No action shall be maintainable for the recovery of any sum due upon any hypothecation or mortgage of any property, or upon any bond conditioned for the payment of money, or the performance of any agreement of trust, or the payment of penalty, unless the same be commenced in the case of an instrument payable at, or providing for the performance of its condition within a definite time, within ten years from the expiration of such time, and in all other cases within ten years from the date of such instrument of mortgage or hypothecation, or of the last payment of interest thereon, or of the breach of the condition. No action shall be maintainable upon any deed for establishing a partnership, or upon any promissory note or bill of exchange, or upon any written promise, contract, bargain, or agreement, or other written security not falling within the description of instruments set forth in the 6th section, unless such action shall be brought within six years from the date of the breach of such partnership deed or of such written promise, contract, bargain, or agreement, or other written security, or from the date when such note or bill shall have become due, or of the last payment of interest thereon. No action shall be maintainable for the recovery of any moveable property, rent, or mesne profit, or for any money lent without written security, or for any money paid or expended by the plaintiff on account of the defendant, or for money received by defendant for the use of the plaintiff, or for money due upon an account stated, or upon any written promise, contract, bargain, or agreement, unless such action shall be commenced within three years from the time after the cause of action shall have arisen. No action shall be maintainable for or in respect of any goods sold and delivered, or for any shop bill or book debt, or for work and labour done, or for the wages of artisans, labourers, or servants, unless the same shall be brought within one year after the debt shall have become due. No action shall be maintainable for any loss, injury, or damage, unless the same shall be commenced within two years from the time when the cause of action shall have arisen. No action shall be maintainable in respect of any case of action not hereinbefore expressly provided for, or expressly exempted from the operation of this Ordinance, unless the same shall be commenced within three years from the time when such cause of action shall have accrued. — Ibid. §§ 4, 6—11. See Senathi Reja, *Compendium of the law of prescription in Ceylon*.

¹) This was first published in the *Ceylon Miscellany* in 1842. It is mainly a translation of the Niti Nighanduwa, which was written between 1830 and 1840. It has been said that Armour's opinion on Kandyan law has not the same weight as Sawyer's. — Koch, 1853; Kiri Menika v. Mutu Menika, (1899), 3 N. L. R. 376.

Perera, Joseph Martinus: Armour's glossary of the Kandyan law. Colombo. 1892.

Sawers, Simon: Digest of the Kandyan law. (3d ed. by Aelian Ondaalje.) Colombo. 1900¹).

Solomon: Manual of Kandyan law²).

Tambyah, Isaac: Digest of the law of contract. Containing the outlines of the English law, the outlines of the Roman-Dutch law, etc. Colombo. 1897.

Thomson, Henry B.: Institutes of the laws of Ceylon. London. 1866.

Statutes.³)

Application of Law.

a) No. 5 of 1852. To introduce into this Colony the Law of England in certain Cases, and to restrict the Operation of the Kandyan Law (8th September, 1852).

Law of England to be observed in maritime matters. 1. The law to be hereafter administered in this Colony in respect of all contracts or questions arising within the same relating to ships and to the property therein, and to the owners thereof, the behaviour of the master and mariners, and their respective rights, duties, and liabilities, relating to the carriage of passengers and goods by ships, to stoppage in transitu, to freight, demurrage, insurance, salvage, average, collision between ships, to bills of lading, and generally to all maritime matters, shall be the same in respect of the said matters as would be administered in England in the like case at the corresponding period, if the contract had been entered into or if the act in respect of which any such question shall have arisen had been done in England, unless in any case other provision is or shall be made by any Ordinance now in force in this Colony or hereafter to be enacted.

Cp. Ord. No. 22 of 1866, § 1. See also section on Law in force, *supra*.

By virtue of the provisions of this section, and subject to the limitations therein contained, *semble*, the following Imperial Acts are in force in Ceylon on 1st January, 1912.

Bills of Lading — 18 & 19 Vic. c. 111. Under *The Stamp Ordinance, 1909*, the term "bill of lading" includes a "through bill of lading," but does not include a mate's receipt. Bills of lading of or for any goods, merchandise, or effects exported or carried coastwise are subject to a stamp duty of 25 cents for each part of every set. The chief mate of a ship is the agent of the master to receive on board for him goods into his custody, but is not generally authorized to bind the master by special stipulation in a contract of carriage. — *Ceyley v. Kerr*, (1878), 1 N. L. R. 109. Where the agents of the shipowner, in the absence of the consignee, land and warehouse the goods for him, they must exercise reasonable care in so doing. — *Simons v. The Wharf and Warehouse Co.*, (1878), 1 S. C. C. 92. Where a bill of lading, in the usual form, was signed by the master, but contained a marginal note which referred to a written agreement, it was held that, in the absence of such agreement, no implied promise on the part of the shipowner to unload with due diligence could be inferred from the acceptance of the goods under the bill of lading. — (1862), *Ram*, 1862, 25. In the absence of an express stipulation to that effect the master is not bound to part with the goods until the freight is paid. Where the charter party provides that the consignee is to take the cargo alongside and from the ship's tackle, the consignee is liable to pay demurrage for failure to take the cargo. — *Black v. Rose*, (1862), *Ram*, 1860, 141. Where the cargo has lost in weight during the transit, the consignee is not entitled to reject the packages short in weight, and sue for the full value of the cargo. His right to recovery is limited to the amount actually short. — *Hassim v. British India S. N. Co.*, (1881), 4 S. C. C. 109. Where the contract provides for a particular mode of carriage the carrier must use this mode. — (1871), *Van*, 179. Where the bill of lading provided for shipment by a steamer sailing "direct or otherwise" to a particular port, the consignee was held not bound to accept delivery where the goods were shipped on board a steamer not sailing "direct or otherwise" to the port named, but was carried beyond the port of destination, there landed, and re-shipped in another ship. — *Delmege, Reid & Co. v. Suppramanian*, (1880), 1 S. C. R. 80. The carrier is liable for safe carriage of the cargo, except where loss occurs through an act of God or of the King's enemies. — *Passe v. Alston*, (1865), *Ram*, 1863, 159. But the carrier is not responsible where loss is due to improper packing. — (1865), *Cressy*, 113. Accident is no excuse. — (1867), *Cressy*, 116. Where a bill of lading exempts the carrier from liability under certain conditions the

¹) As to the value of his opinions, see *Koch*, 1853; *Kiri Menika v. Mutu Menika*, (1899), 3 N. L. R. 376. — ²) Solomon was Judicial Commissioner of Kandy in 1821—1827. — ³) As in force 1st January, 1912.

burden of proof is on the carrier that the loss was caused by some of the excepted causes. — (1877), Ram. 1877, 125. A stipulation in a bill of lading that the carrier shall not be liable for leakage or breakage covers breakage of plates of glass where such breakage was not due to the negligence of the carrier. — *Armitage Bros. v. Eastern Steamship Co., Ltd.*, (1881), 4 S. C. C. 148. The burden of proof of negligence is on the plaintiff. — *Subrayapulle v. British India S. N. Co.*, (1907), 3 Bal. 40. 1 Leomb. 87. Plaintiff bought cocoanut oil, but had not paid in full for the same. It was shipped by the sellers, consigned to themselves, in old barrels belonging to the plaintiff. The bill of lading stated that the barrels were old, and the mate's receipt that they were leaking. Plaintiff paid the balance of the purchase money before delivery and sued the carriers for the oil lost in transit. It was held that he could not recover on the ground (per Lawrie, J.) that he was not a party to the contract, (per Moncrieff, J.) that the barrels were unfit to withstand the perils of the voyage. — *Candappa Pillai v. British India S. N. Co., Ltd.*, (1901), 2 Br. 181. A bill of lading stipulated that the carrier was to be responsible for "wet and damage on the voyage." The goods were damaged by perils of the seas, and destroyed on sanitary grounds by the Customs. It was held that the carrier was liable. — (1871), Van. 208. Where brown sugar was shipped in gunny bags under a bill of lading providing that the shipowner should not be liable for damage caused by "insufficient packing and reasonable wear and tear of packages," it was held that the carrier was not liable where the sugar was damaged by the exudation of molasses through the bags caused by the weight of the sugar itself. — *Miller v. Whittle*, (1878), 1 S. C. C. 15. Where the bill of lading provides that "in case the whole or part of the goods can not from any cause be found for delivery or be delivered during the vessel's ordinary stay at the port of destination, the company is only bound to forward the goods to that port from any subsequent port of any other steamer . . . to be at the risk of the owner of the goods," the shipowner in order to claim the benefit of this clause must show that the goods could not be found for delivery or be delivered during the time indicated. — *Abdul Cader v. Asiatic Steam Navigation Co.*, (1900), 4 N. L. R. 132. A stipulation in a bill of lading providing that the ship's responsibility shall cease when the goods are delivered into a lighter when "the goods are over the ship's side level with the rail" exempts the shipowner from responsibility for loss, not due to the fault of anyone engaged in unloading the same, but caused by the lighter bumping up against the bales, which are thereby dislodged from the sling, and fall into the sea. — *Carson & Co. v. British India S. N. Co.*, (1881), 4 S. C. C. 67. The acknowledgment in a bill of lading that the goods were received "in good order and condition" does not preclude the carrier from showing that the goods when shipped were in bad order and condition, and were delivered in the same state as received. — *Ramenaden Chetty v. Austro-Hungarian Lloyds' Steam Navigation Co.*, (1891), 9 S. C. C. 165. The stipulation that "in all cases and under all circumstances the liability of the Co. shall absolutely cease when the goods are free of the ship's tackle and thereupon the goods shall be at the risk for all purposes and in all respects of the shipper or consignee" exempts the carrier from liability for short delivery by the wharfage company. — *Cunja Moosa v. British India S. N. Co.*, (1905), 2 Bal. 129.

Merchant Shipping — 57 & 58 Vic. c. 60. See especially §§ 492—501, relating to delivery of goods and lien for freight and §§ 502—509 relating to limitation of liability of shipowner.

Liability of Shipowners — 63 & 64 Vic. c. 32.

Marine Insurance — 6 Edw. 7, c. 41. Within the meaning of the *Stamp Ordinance, 1909*, a "policy of sea insurance" or a "sea policy" (a) means any insurance made upon any ship or vessel (whether for marine or inland navigation) or upon the machinery, tackle, or furniture of any ship or vessel, or upon any goods, merchandise, or property of any description whatever on board on any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship or vessel; and (b) includes any insurance of goods, merchandise, or property for any transit, which includes, not only a sea risk within the meaning of clause (a), but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance. Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise, or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea insurance. Policies of marine insurance are subject to a stamp duty of 25 cents. — Ord. No. 22 of 1909, § 3, Sched.

And in respect of bills of exchange, etc. 2. The law to be hereafter administered in this Colony in respect of all contracts and questions arising within the same upon or relating to bills of exchange, promissory notes, and cheques, and in respect of all matters connected with any such instruments, shall be the same in respect of the said matters as would be administered in England in the like case at the corresponding period, if the contract had been entered into or if the act in respect of which any such question shall have arisen had been done in England, unless in any case other provision is or shall be made by any Ordinance now in force in this Colony or hereafter to be enacted.

Cp. Ord. No. 22 of 1866, § 1. By virtue of the provisions of this section the *Bills of Exchange Act, 1852*, (45 & 46 Vic. c. 61), as amended by the *Bills of Exchange (Crossed Cheques) Act, 1906*, (6 Edw. 7, c. 17), is in force. Within the meaning of the *Stamp Ordinance, 1909*, a "bill of exchange" means a bill of exchange as defined by the Imperial Act, and any other document

entitling or purporting to entitle any person whether named therein or not to payment by any other person of, or to draw upon any other person for, any sum of money. A "bill of exchange" payable on demand includes: a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen; b) an order for the payment of any sum of money weekly, monthly, or at any other stated periods; and c) a letter of credit, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn. A "cheque" means a bill of exchange drawn on a specified bank, and not expressed to be payable otherwise than on demand. A "promissory note" means a promissory note as defined in the Imperial Act, and also includes a note promising the payment of any sum of money out of any particular funds which may or may not be available, or upon any condition or contingency which may or may not be performed or happen. A bill of exchange payable on demand is subject to a stamp duty of 5 cents. Bills of exchange, promissory notes, drafts, or orders for the payment at any time otherwise than on demand to the party named therein, or the bearer, or to order, are subject to the following stamp duties: If not over rs. 100, 10 cents; over rs. 100 and not over rs. 250, 15 cents; over rs. 250 and not over rs. 500, 25 cents; over rs. 500 and not over rs. 1000, 50 cents; for every further rs. 1000, or part thereof, 50 cents. Where a bill of exchange is drawn in a set one bill only of the set need be stamped. In the absence of an agreement to the contrary the expense of providing for a proper stamp must be borne by the person making, drawing, or executing the instrument. Failure to affix the proper stamps renders the person failing to affix the same liable to a fine and makes the instrument inadmissible in evidence. — Ord. No. 22 of 1909, §§ 3, 28, 36, 58, and Sched. It was once held that an instrument not containing the words "to order" or "to bearer" was not negotiable. — (1835), Morg. Dig. § 183. But otherwise under the Imperial Act. An instrument in the following form: "Hallerabage, 27th November, 1867. I promise to pay Apponso Dhoby of Balangodda the sum of four pounds (say £ 4) as per account taken from Frederick Lewis, James Monro," is a note (under the Stamp Ordinance). — (1871), Van. 152. *Scoble*, the following is a good promissory note: "I, Suban Appoo do hereby declare to have borrowed and received from H. G. the sum of rs. 24, on condition to pay and settle the same within one year from the date hereof. In default it is agreed to pay and settle the same with interest thereon at 25% per annum for the months and years that may elapse from then." — (1877), Ram. 1877, 17. An instrument in the following form is a promissory note: "We, the undersigned, promise to pay Puthan Kangany a sum of rs. 137, being debt on two coolies, Kadirai and Nagamma." — Puthan Kangany v. Perumal, (1901), 5 N. L. R. 160; 2 Br. 153. As to the making and endorsement of negotiable instruments by companies, see Ord. No. 4 of 1861, §§ 37, 55, *infra*. A person who can write may sign with a cross. — Ahamadoe Lebbe v. Gallepittgedere, (1857), 2 Lor. 4. Where a promissory note is signed by means of a mark, such mark does not require attestation, but may be proved by external evidence. — Ana Pitehey v. Kalloo, (1876), Ram. 1872, 244. A signature across the duty stamp in the top left hand corner of a note, after the body of the note was filled in, is not a sufficient signing within the meaning of the Act, at least in the absence of evidence showing that the signature was intended for something more than a mere cancellation of the stamp. — Maythin v. Sinno, (1897), 4 Bal. 141. But where the signature is across a duty stamp placed at the foot of the note such signature is sufficient. — Domingu Appuham v. Epitagedera Vidane, (1899), 1 Tamb. 7. Where a note for a certain amount is given in consideration of a smaller amount, the payee is entitled to recover the amount stated in the note. — Muttu Ramen Chetty v. Piper, (1906), 2 Bal. 174. Where there is a discrepancy between the amount expressed in the bill and the amount expressed in the marginal note, the instrument is to be deemed to be for the amount expressed in the body of the bill. The marginal figures are not an essential part of the instrument. — Mutturamen Chetty v. Allegan Gangany, (1898), 3 N. L. R. 265. Whether a bill or note taken on account of a debt extinguishes the debt depends upon the intention of the parties. Ordinarily the debt is not extinguished until the bill or note is actually paid, or unless the creditor has been guilty of laches. — Boyd v. Staples, (1821), Ram. 1820, 19; Arunasalem Chetty v. Veerawago, (1892), 2 C. L. R. 143. A promissory note given in renewal of another note merely suspends the liability of the maker until the new note has been dishonoured by non-payment. — Velandan v. Perera, (1902), 6 N. L. R. 48; 3 Br. 148. Where a promise to pay the debt of another results in the release of an original debtor from his liability, the promise constitutes a novation of the debt, extinguishing the old liability. — Rasool v. Pakeer, (1898), 4 Tamb. 75. A minor executing a note jointly with another, but receiving no part of the consideration for the note, is not liable thereon. — Vellasamy Pulle v. Peries, (1907), 3 Bal. 3; 2 Leemb. 49 a. Unless the father consented to the same. — Muttiah Chetty v. De Silva, (1895), 1 N. L. R. 358. The mere fact that the note is executed jointly with the father is not enough if the note was executed for the father's own benefit. — Vellasamy Pulle v. Peries, (1907), 3 Bal. 3; 2 Leemb. 49 a. Where a note is executed by an agent on behalf of his principal the acts of the agent must be done in strict conformity with the powers conferred. — Letchuman Chetty v. Perna Carpen Chetty, (1879), 2 S. C. C. 193. In determining whether the execution of a negotiable instrument is in such form as to bind the principal, or whether the agent becomes personally liable under § 26, the commercial customs prevailing in Ceylon may be examined to determine whether the form employed is the one usually adopted in the Colony by an agent in executing an instrument in the name of the principal. — Wairaven Chetty v. Jussan Sabo, (1906), 10 N. L. R. 118. — Where a note was

executed by an agent and read: "I, the undersigned, promise, etc.," and was signed in Sinhalese with certain words, translated as "Sebo's attorney Gira," it was held that Sebo became bound, (per Lawrie, J.) on the ground that the signature must be read as "Sebo, by her attorney Gira;" (per Withers, J.) on the ground that the question whether this was a procuration signature was one of fact, and that the signature sufficiently expressed that Gira subscribed for Sebo. *Bonser, C. J.*, dissented, on the ground that the additions to the signature were merely words of description, which did not exempt Gira from personal liability. — *Jafferjee v. Sebo*, (1897), 3 C. L. R. 97; 2 N. L. R. 286. The signing and delivery of a blank stamped paper in order that it may be converted into a promissory note operates as a prima facie authority to fill it up for any amount the stamp will cover. *Seemle*, an agreement restricting such authority must be specially pleaded, and is not provable under a mere traverse of the making of the note. — *Murugappa Chetty v. Perumal Kangany*, (1891), 2 C. L. R. 56. Where a note is not filled out strictly in accordance with the authority given, in a suit by the payee against the maker, it is competent for the latter to show the true facts, and to deny his liability to the payee. — *Chitambaram Chetty v. Vara Asari*, (1902), 6 N. L. R. 377. Where cheques are signed in blank, and are stolen, the drawer may show these facts, and in the absence of negligence on his part, he is not liable thereon. — *Moyappa v. Samasundaram*, (1900), 1 Br. 275; 4 N. L. R. 270. As to authority to endorse for a Chetty firm, see *Bank of Madras v. Sidemherem Chetty*, (1883), 6 S. C. C. 153; *Bank of Madras v. Weerappa Chetty*, (1885), 7 S. C. C. 89. As to the taking of evidence on commission where there is a charge of forgery, see *Meyappa Chetty v. Fernando*, (1899), 1 Br. 236. An endorsement by the surviving partner of a firm entitles the endorsee to all rights under the instrument. — *Punchihami v. Weeraratne*, (1895), 3 N. L. R. 192. As against the payee the maker of a note executed under a mutual mistake as to the amount may show the fact of such mistake, and the payee is barred in equity from recovering in excess of the actual amount due. — *Tambyah v. Hassena Marikar* (1885), 7 S. C. C. 154. Except as against a holder in due course, want of consideration can be shown. Such right is not limited by the inclusion of the words "Value received" in the note. — (1851), *Crow*, 3. A note given in consideration of an agreement not to prosecute a criminal charge is void. — *Lowe v. Polaris*, (1894), 1 N. L. R. 142. So is a note given in consideration of the payee's bringing about the annulment of certain insolvency proceedings and forbearing to oppose an application for a certificate in insolvency. — *Thompson v. Nannytamby*, (1860), *Ram* 1860, 81. And a note given in consideration of an agreement not to bid at the sale of a government rent. — (1870), *Van*, 110. Where a note was given in part payment for a tract of land, and after the sale the title was disputed, in action pending for the recovery of the land, it is not competent for the maker to set off the claim for damages for the breach of contract against the payee's action on the note. — *Appuhamy v. Appuhamy*, (1884), 6 S. C. C. 146. Where there is only a partial failure of consideration, entitling the defendant to relief pro tanto, the defence must be specially pleaded. — *Ameresinghe v. Goonewardene*, (1886), 7 S. C. C. 197. The partial failure of consideration constitutes no defence if the amount to be deducted is in the nature of unliquidated damages. — *Mahamadu v. Lewis*, (1888), 8 S. C. C. 148. Where an indorsee takes with knowledge of a failure of consideration his position is the same as that of the payee. — *Davith v. Nadoris*, (1898), 3 N. L. R. 204; distinguishing *Ramasamy v. Veerappa*, (1891), 1 S. C. R. 91. A nominal payee may sue on an instrument, although the consideration came from a third person. — *Karuppan Chetty v. Muttutamy*, (1907), 3 Bal. 221. Delivery is necessary to the validity of an instrument. As to what constitutes delivery, see *Kandiya v. Delmege, Forsythe & Co.*, (1905), 2 Bal. 153. Except as against a holder in due course, oral evidence is admissible to show that what purports to be a complete contract has in fact not become operative. — *Fernando v. Silva*, (1902), 7 N. L. R. 1. Or is subject to special condition, or given for a special purpose. — *Whitham v. Picheche Muttu Kankani*, (1900), 6 N. L. R. 289; *Imray v. Palawasen*, (1900), 4 N. L. R. 113; 1 Br. 87; *Muttiah v. Ramaswamy*, (1903), 6 N. L. R. 323. An endorsement in the following form: "Paid by the endorser. Received payment for the Mercantile Bank of India, Ltd., J. B. Bishop, Agent," followed by delivery of the note to such endorser, gives to him all the rights of a holder in due course. — *Segappa Chetty v. Murugan Kangany*, (1897), 2 N. L. R. 375. Where an instrument has once been endorsed in blank it becomes transferable by delivery, and a payee thereof redeeming the note from the holder may sue thereon. — *Supramanian Chetty v. Neera Saibo*, (1884), 6 S. C. C. 87. An instrument containing several endorsements in blank which has inserted above the name of the last endorser in blank, words directing the payment thereof to a named person or order is an instrument specially endorsed. §§ 8 (3), 34 (4) of the Bills of Exchange Act mean the signature of the last endorser in blank. — *Sangalia Pulle v. Selleya Pulle*, (1902), 3 Br. 75; overruling *Saibo v. Fernando*, (1901), 2 Br. 38; 5 N. L. R. 40. The assignee of a negotiable instrument can sue thereon in his own name only if he has given notice in writing of the assignment. The giving of such notice can not be waived by the parties. — *Carpen Chetty v. Sammugan Tower*, (1884), 6 S. C. C. 40. The endorser of a negotiable instrument by his endorsement contracts with the endorsee that the maker of the instrument will, upon its being presented to him on the due date at the place indicated by the date or otherwise on the instrument, pay the endorsee the amount thereof, and that in default of the maker so doing, he, the endorser, will indemnify the endorsee. — *Punchappu v. Suppremanian Chetty*, (1879), 2 S. C. C. 92. Where a negotiable instrument is lost before it becomes due, the holder is entitled to have another instrument of the same tenor as that which has been lost, on giving security to indemnify the drawer or maker in case the instrument that has been lost shall be found again. — *Rabinell v. Gibson*, (1829), *Ram*, 1820, 133. Where an instrument has been endorsed in blank, and has been lost, a person becoming

the holder thereof in due course may enforce payment. — *Ebrahim v. Watiappa Chetty*, (1899), 3 Tamb. 50; Koch, 15. See Civil Procedure Code, § 53. Where a note is given to an agent during the payee's absence, and on the latter's return it is endorsed back to the payee, he is not a holder in due course. — *Palaniappa Chetty v. Reid*, (1905), 1 Leemb. 28; 3 Bal. 182. An alteration of a note made with the consent of the maker is valid. — *Velupillay v. Murugasar*, (1866), Ram. 1863, 218. Where a note was signed in blank on 24th November, 1902, and bore a stamp having the same date, and an endorsee in good faith filled out the note as if it had been signed on the 11th November, it was held that the endorsee could recover. — *Muttu Carpen Chetty v. Kadiravel and Valliamai*, (1904), 1 Bal. 50. Where a note contained no stipulation as to the rate of interest, but there was a collateral agreement to pay interest at the rate of 30%, the payee was not thereby authorized to insert the figure 30 to indicate the rate of interest. Such act was a material alteration, vitiating the note. — *Raman Chetty v. Rumanathen*, (1905), 1 Bal. 182; 1 Leemb. 21. But a holder in due course of a note so altered may recover according to the original tenor of the note. — *Sokalingam Chetty v. De Hoedt*, (1902), 6 N. L. R. 348. The signature of a new maker is a material alteration. — *Palaniappa Chetty v. Reid*, (1905), 3 Bal. 155; 1 Leemb. 28. And so is the addition of a signature of a witness. — *Annamalay v. De Silva*, (1907), 2 A. C. R. 33. Where an instrument is payable at a certain place it must be presented at the place named, unless there is some excuse for not doing so, within the meaning of § 46 of the Act. — *Karuppen Chetty v. Palaniappa Chetty*, (1907), 1 A. C. R. 161; 10 N. L. R. 228. The libel must contain an averment of presentation at the place of payment. — *McLaren & Co. v. Cameron*, (1882), 5 S. C. C. 48; *Ponnampalem v. Kurunathie*, (1883), 6 S. C. C. 8. A delay of one month in presenting a cheque for payment will not exonerate the endorser, unless he was prejudiced by the delay. — *Karpen Chetty v. Greve*, (1886), 8 S. C. C. 18. A delay of two months held unreasonable. — *Arnasalam v. Marikar*, (1903), 8 N. L. R. 209; affirmed (1905), 1 Leemb. 74. A cheque stipulating no time of payment is payable on demand. — *Chartered Mercantile Bank v. Silva & Co.*, (1866), Ram. 1863, 199. Failure to present a demand note for payment within ten months of its date will not release an endorser where he signed with knowledge of the fact that the note was given to cover a loan. — *Chartered Mercantile Bank v. Dickson*, (1871), 8 Moo. P. C. (N. S.) 1, reversing *Chartered Mercantile Bank v. Dickson, Tatham & Co.*, (1868), Ram. 1863, 339; (1870), Van. 7. Notice of dishonour written in English is a sufficient notice to the principal of a Coast Chetty firm carrying on business in India and Colombo. — *Bank of Madras v. Virappa Chetty*, (1880), 3 S. C. C. 136; (1881) 4 S. C. C. 69. The drawer of a bill is entitled to notice of dishonour. — *Boyd v. Bennett*, (1821), Ram. 1820. And is liable for all expenses arising from such dishonour. — *Tolfrey v. Bennet*, (1822), Ram. 1820, 53. A bank holding a negotiable instrument payable at such bank and upon which a customer is liable as endorser, may, upon dishonour of the instrument, due notice of which has been given to the customer, debit the customer's account with the amount of the instrument. — *Weerawago v. Bank of Madras*, (1893), 2 C. L. R. 11. Presentment and notice of dishonour may be waived by the person entitled. — *Pedro Pulle v. Mu. Ku.*, (1868), Ram. 1863, 334. An endorsee giving proper notice of dishonour to his immediate endorser may avail himself of notice of dishonour properly given by such endorser to prior endorsers, and sue the latter. — *Oriental Bank Corporation v. Sonnenkalb*, (1866), Ram. 1863, 190. The acceptor of a foreign bill is liable to pay according to the course of exchange at the time of the acceptance. — *Holland v. Winter*, (1826), Ram. 1820, 78. Mere delivery of a note to the maker, without proof that the amount due was paid or that the note was delivered expressly in satisfaction of the debt, does not preclude the former holder from suing thereon. — (1834), Morg. Dig. § 106. A person liable on a negotiable instrument paying the amount of it in the belief that the payee is still the holder when in fact the instrument has been endorsed to another, may recover the amount so paid. — *Francisco Pulle v. Avoo Lebbo*, (1864), Ram. 1863, 133. As to burden of proof of payment, see *Comerappa Chetty v. Jayasooriya*, (1896), 3 N. L. R. 193. A note payable on demand entitles the holder to demand payment at any time. Upon receipt of such payment the note is discharged, and is not revived by a subsequent negotiation. — *Tenna v. Balaya*, (1908), 11 N. L. R. 27. The holder of a negotiable instrument may sue the principal obligor and endorsers either together or successively, but his right of recovery is limited to the amount of the instrument. — *Abeyaratne v. Jayasundara*, (1872), Ram. 1872, 67. The executor of a deceased person whose testator was a party to a joint and several note can be joined with the other maker in a suit by the holder. — *Muttiah Chetty v. de Silva*, (1896), 2 N. L. R. 109. But not where the note is joint. — *Vellayappa Chetty v. Sinnatamby*, (1894), 1 N. L. R. 350. Suit on a note given by a partnership may be brought against the surviving partner without joinder of the legal representative of the deceased partner. — *Muttiah Chetty v. de Silva*, (1897), 3 N. L. R. 59. The nominal payee of an accommodation note can sue the maker. — *Karuppan Chetty v. Muttutambay*, (1907), 3 Bal. 221. Where a husband and wife are married without community, and suit is brought on a joint promissory note, in which the husband appears and defends, a judgment by default can not be given against the wife. — (1899), Koch, 24. The actual holder of a negotiable instrument need not aver and prove the endorsements thereon. He will be presumed to be the holder in due course. — *Letchiman Chetty v. Arunasalem Chetty*, (1893), 3 C. L. R. 52. The fact of endorsement within the territorial limits of a Court gives to that Court jurisdiction in a suit by the endorsee. — *Cader Tamby v. Omer Lebbo*, (1889), 1 C. L. R. 10. See further as to procedure. — *Karuppan Chetty v. Weerasunha*, (1879), 2 S. C. C. 132; *Weerappa Chetty v. de Silva*, (1881), 6 S. C. C. 82; *Natchiappa Chetty v. Tambyah*, (1896), 6 N. L. R. 205.

Proviso in regard to interest. 3. Provided that no person shall be prevented from recovering on any contract or engagement any amount of interest expressly reserved thereby, or from recovering interest at the rate of nine per cent. per annum on any contract or engagement, or in any case in which interest is payable by law and no different rate of interest has been specially agreed upon between the parties, but the amount recoverable on account of interest or arrears of interest shall in no case exceed the principal.

The usury laws of Holland, being in their nature merely local enactments, and unsuited to the condition of affairs in Ceylon, were not introduced by the Dutch, and were not in force during their occupation of the Islands. — *Ramasamy Pille v. Tamby Candoe*, (1875), *Ram*. 1872, 189; *Sennatamby Cumaravale v. Muttatamby Sitterapuvapulley*, (1881), 4 S. C. C. 28. This question is elaborately discussed by Mr. Justice Clarence in *Corbet v. Ceylon Co.*, (1885) (Pamphlet in volume entitled "Ceylon Company Cases," in Library of Congress, Washington). He says: "There is no doubt that under the Roman-Dutch Law of the United Provinces of the Netherlands the exaction of interest was subject to three restrictions: 1. There was a *modus legitimus*, varying according to locality; 2. Compound interest was not allowed, save in the case of annual rents and of interest due to the State, and also, as Van Leeuwen says, locally at Antwerp; 3. Arrears of interest were not recoverable to an amount exceeding the principal. Vander Linden wrote in 1806, and according to him all these restrictions were in force in his time. Defendants, however, argued that the restriction against compound interest was never brought by the Dutch to Ceylon. In the case 63 436, D. C. Colombo, decided on 8th July 1875, the majority of the then Judges held, contrary to the opinion of the dissenting Judge, Mr. Justice (afterwards Chief Justice) Cayley, that the restriction as to rate of interest was never brought by the Dutch into their Ceylon Settlements. But the decision of the majority of the Court on that point proceeded to a considerable extent on the circumstance that as to rate of interest the *modus legitimus* varied very considerably in different parts of the United Provinces, and the Judges were careful to point out that far other considerations applied to the matter of compound interest. 'This,' said the Acting Chief Justice, 'and the recovery of interest in arrear exceeding the principal, have never been allowed,' i. e. in Ceylon. It seems to me antecedently probable that the restriction against compound interest would be imported by the Dutch into Ceylon. It was a law affecting commercial affairs, and the Dutch Colony in Ceylon was certainly a commercial one. (Compare *Thurburn v. Steward*, 7 Moo. P. C. 333.) I can see no reason for supposing that the restriction against compound interest was not brought by the Dutch to Ceylon. The next question is, Has the restriction been removed by legislation? The two Proclamations of March and August, 1800, deal with the rate of interest, and one of them goes beyond the Roman-Dutch Law, inasmuch as it invalidates mortgages made for a rate of interest higher than that limited as lawful, whereas under the Roman-Dutch Common Law they were void only quoad the excess: but they do not touch compound interest. Neither does the Regulation 18 of 1823. The two Proclamations were repealed by Regulation 5 of 1835. The Regulation of 1823 is still in force. In fact, the only enactment about which there can be any question of its altering the Common Law against compound interest is the Ordinance 5 of 1852. The Judges who took part in the decision of the Colombo case already referred to were evidently all of opinion that that Ordinance had not legalized compound interest, but still that question was not raised in the case before them. An earlier case has been referred to, D. C. 22 393, *Kalutara*, Van. 57. But though the language used in that case is certainly general and unrestricted by any express reference to the date of the instrument there declared on, we know that the instrument declared on was made in 1837, before the Ordinance, and it is dangerous and inadvisable to apply a decision to facts differing essentially from those which were before the Court. I am not aware of anything amounting to a distinct and express decision of this Court upon the effect of this Ordinance with regard to compound interest. The part of the Ordinance upon which reliance is placed by those who maintain that compound interest is now legal is the first part of sec. 3. Provided that no person shall be prevented from recovering on any contract or engagement any amount of interest expressly reserved thereby, or from recovering interest at the rate of 9 per cent. per annum on any contract or engagement, or in any case in which interest is payable by law, and no different rate of interest has been specially agreed upon between the parties. But the amount recoverable on account of interest or arrears of interest shall in no case exceed the principal. In the Colombo case already referred to, Mr. Justice Cayley was of opinion that this proviso was intended to apply only to the subject matter of the preceding part of the enactment. Apart from the high authority attaching to Mr. Justice Cayley's decisions, that view commends itself to my mind rather than the opposite conclusion arrived at by the other two Judges in the same case; moreover, their construction of this proviso is not an ingredient of decision necessary to the ruling of the majority on the question then before the Court, viz. the existence or non-existence of restriction as to the rate of interest, because the majority were of opinion that no restriction as to the rate of interest had been imported from Europe. I admit that the language of this proviso is embarrassing, but I do not think it was intended to have the effect of removing the Common Law prohibition against compound interest in general. I am strongly disposed to think, with Mr. Justice Cayley, that the object of this proviso was simply to prevent the operation of the English Usury laws (then only temporarily suspended with regard to bills of exchange and promissory notes) from attaching

to those classes of contracts to which in other respects the Ordinance was applying the English law. The title and the preamble express the Ordinance as intended to introduce the law of England in certain respects. I can quite understand the enactment being designated to introduce the English law with respect to a certain class of contracts, and further to stereotype as permanent a modification of the English law as yet effected in England by an enactment of merely temporary operation. But I find it difficult to think that an Ordinance expressly devoted to a partial introduction of the law of England should go out of its way to introduce an innovation forming as yet no part of the law of England. For the usury laws in England were not repealed until 1854. The contract for interest upon interest in the present case is in a mortgage. Now, as I understand the law to have been in England before 1854, an original stipulation in a mortgage for interest upon interest was not legal, and it is sufficient for the purposes of this appeal to say that I do not think the Ordinance 5 of 1852 — which was designed, as the title says, 'to introduce the law of England in certain cases,' and was passed, as the preamble says, because it was 'expedient that the law of England should be observed as the law of this Colony in certain respects' — was intended to make it legal here." There is no restriction on the rate of interest. — 60% allowed. — *Payna Layna Ana Lana Peria Carpen Chetty v. Herft*. (1886), 7 S. C. C. 182. Compound interest is illegal. — (1870), *Van*, 57; *Ceylon Co. v. Carey*, (1873), D. C. Colombo, No. 59062; *Corbet v. Ceylon Co.*, (1885). (Pamphlets in volume entitled "Ceylon Company cases" in Library of Congress, Washington.) When interest is in arrear only a sum equal to the principal can be recovered as interest. But this rule does not obtain when the interest is not in arrear. In the latter case the amount of interest already paid may exceed many times the principal. — *Sedembranader v. Sangerapulle*, (1845), *Ram*, 1843, 19; *Talpe Gamegey Don Carolis De Silva Appuhami v. Baffamagay Don Theodoris De Silva*, (1882), 5 S. C. C. 16. A stipulation for the payment of an increased rate of interest where the debtor is not punctual in paying the interest originally stipulated for will be enforced, if not outrageously disproportionate to the damages sustained by the creditor. — *Kailasam Chetty v. Fernando*, (1901), 2 Br. 87.

Proviso in regard to contracts made abroad. 4. Provided further that nothing in the preceding sections contained shall alter or affect the law in regard to any question arising for adjudication within this Colony upon a contract made abroad, which question shall be determined as if this Ordinance had not been enacted.

If the Kandyan law is silent, the law of the Maritime Provinces to govern. 5. Where there is no Kandyan law or custom having the force of law applicable to the decision of any matter or question arising for adjudication within the Kandyan Provinces, for the decision of which other provision is not herein specially made, the Court shall in any such case have recourse to the law as to the like matter or question in force within the Maritime Provinces, which is hereby declared to be the law for the determination of such matter or question.

[6. is repealed by Ord. No. 2 of 1889.]

The criminal law of the Maritime Provinces to extend to the Kandyan Provinces. 7. The law administered within the Maritime Provinces upon the trial and conviction of any person for any crime or offence committed within such Provinces is hereby declared to extend, and shall be applied to the like crimes and offences committed within the Kandyan Provinces, unless by any law now in force in this Colony or in any part thereof, or hereafter to be enacted, other provision has been or shall be made in that behalf.

The succession ab intestato to the property of Europeans in the Kandyan Provinces to be the same as in the Maritime Provinces. 8. The inheritance and succession to the real property situated within the Kandyan Provinces of persons commonly known as Europeans, and of their descendants, and of persons commonly known as Burghers, who may die possessed of or entitled to any such property, and without disposing of the same by will, and the inheritance and succession to the personal property, of such persons who at the time of their death shall be domiciled within the Kandyan Provinces, and who may die possessed of or entitled to any such property, and without disposing of the same by will, shall be regulated and determined in such manner and according to such laws and usages as would have been the case had such real property been situated, or had the deceased been domiciled at the time of his death, within the Maritime Provinces, anything contained in the sixth section of the Ordinance No. 21 of 1844, entitled "An Ordinance to make better provision for the disposal of landed property," to the contrary notwithstanding.

This section is repealed by Ord. No. 15 of 1876, in so far as inconsistent.

Marriages of Europeans not valid in the Maritime Provinces to be invalid in the Kandyan Provinces. 9. No marriage contracted between persons commonly known as Europeans or their descendants, or persons commonly known as Burghers, or between any such persons and any Sinhalese (whether of the Maritime or Kandyan

Provinces), or any Asiatic within the Kandyan Provinces, shall be valid, unless such marriage would have been valid if contracted within the Maritime Provinces.

The Mahomedan Code in force in the Maritime Provinces extended to Mahomedans in the Kandyan Provinces. 10. The code of Mahomedan laws, entitled Special Laws concerning Maurs or Mahomedans, promulgated on the 5th day of August, 1806, and ordered to be observed throughout the whole of the Province of Colombo, shall extend and be applied to the like cases, matters, and things between Mahomedans residing within the Kandyan Provinces and in other parts of this Colony, unless in any case other provision is or shall be made by any Ordinance now in force in this Colony or hereafter to be enacted.

Before the adoption of this Ordinance Kandyan Law governed the Moors in the Kandy territory. — (1849), Aust. 99. But *cp. Saiboo Tamby v. Ahemet*, (1851), Ram. 1843, 163. Only such parts of the Mohammedan law are in force in Ceylon as have been specially introduced into the Island, either by express legislation, or by ancient, continuous, and inveterate custom or usage, which is all the Charter of 1801 meant. — (1873), Gren. III, 28. In suits between Mohammedans resort must be had to the Mohammedan Code of 1806. Where the Code is silent the common law of Ceylon is applied. — *Ibrahim Sayibu v. Muhamadu*, (1898), 3 N. L. R. 116; *Casim v. Peria Tamby*, (1896), 2 N. L. R. 200; *Jayewardene, Roman-Dutch law*, p. 32.

Ordinance when to take effect. 11. This Ordinance shall come into operation on the first day of July in the year of our Lord One thousand eight hundred and fifty-three.

b) No. 22 of 1866. An Ordinance to extend the Introduction into this Colony of the Law of England in certain Cases (24th December, 1866).

Law of England to be observed in all commercial matters; proviso. 1. In all questions or issues which may hereafter arise or which may have to be decided in this Colony with respect to the law of partnerships, joint stock companies, corporations, banks and banking, principals and agents, carriers by land, life and fire insurance, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any Ordinance now in force in this Colony or hereafter to be enacted: Provided that nothing herein contained shall be taken to introduce into this Colony any part of the law of England relating to the tenure or conveyance, or assurance of, or succession to, any land or other immoveable property, or any estate, right, or interest therein.

*Cp. Ord. No. 5 of 1852. The law relating to partnership is in part contained in Ords. No. 7 of 1840 and No. 21 of 1866. By virtue of the provisions of this section the Imperial Partnership Act, 1890, (53 & 54 Vic. c. 39), and the Imperial Limited Partnerships Act, 1907, (7 Edw. 7, c. 24), are in force. The admission of one partner made under circumstances where the admission would result in a benefit to himself is not binding on the firm. — Walliappa Chetty v. Nagappa Chetty, (1881), 4 S. C. C. 100. A partner damaging partnership property is responsible therefor to his copartners. — Gillo v. Pang, (1863), Crow. 69. A managing partner receiving a share of profits and a salary is not entitled to a commission for the sale of his partner's interest in the business to himself. — Blacklaw v. Miller, (1866), Ram. 1863, 212. A person may become liable as a partner by a holding-out. — (1833), Aust. 6; Marsh. 460, Morg. Dig. § 33. While a partner does not ordinarily have authority to pledge partnership property as security for his individual debts, such acts may be ratified by the firm, and the pledgee be entitled to hold the property as against the partnership. — Nannytamby v. Assignees, (1860), Ram. 1860, 9. During the continuance of a partnership a partner can not sue his copartner for an accounting and the recovery of his share of the profits. — Wieraratne v. Abayawardana, (1884), 6 S. C. C. 26. As to accounting, see also Nowell v. Nowell, (1881), 4 S. C. C. 104. Where a contract is made by one of several partners, suit thereon may be brought in the name of such partner or in the name of the firm. — (1844), Aust. 75. In a suit by a partnership the names of the individual partners must appear as plaintiffs. — Letchman Chetty v. Tambiah Sanmugam, (1903), 1 Bal. 114; 8 N. L. R. 121. A surviving partner may sue in respect of a partnership transaction without joining the representatives of a deceased partner. — Sinnecarpen Chetty v. Super Ramenaden, (1858), 3 Lor. 129; *Erane v. Nusserwaujee*, (1908), 11 N. L. R. 95. As to the nature of a partnership liability, see *Lee Hedges & Co. v. Smyth*, (1884), 6 S. C. C. 108. As to negotiable instruments executed or indorsed by or to a partnership, see note to Ord. No. 5 of 1852, § 2, *supra*. The law relating to companies is contained in Ord. No. 4 of 1861, as amended, *infra*. The law relating to bills of lading is discussed in note to Ord. No. 5 of 1852, § 1, *supra*.*

Commencement. 2. This Ordinance shall come into operation on the date of the passing thereof.

Partnership.¹⁾**a) No. 7 of 1840. To provide more effectually for the Prevention of Frauds and Perjuries (18th January, 1840).**

No promise, etc., to be in force unless in writing and signed. 21. No promise, contract, bargain, or agreement, unless it be in writing and signed by the party making the same, or by some person thereto lawfully authorized by him or her, shall be of force or avail in law for any of the following purposes: . . . 4. For establishing a partnership where the capital exceeds one hundred pounds: Provided that this shall not be construed to prevent third parties from suing partners, or persons acting as such, and offering in evidence circumstances to prove a partnership existing between such persons, or to exclude parol testimony concerning transactions by or the settlement of any account between partners.

Partnership agreements are subject to a stamp duty of rs. 10. — Ord. No. 22 of 1909, Sched. This section is not inconsistent with § 14 of the Imperial Act. — *Orient Co., Ltd. v. Fernando*, (1905), 2 Bal. 107; 1 Leemb. 59. Provisions similar to those of the above subsection were contained in the Proclamation of 28th October, 1820, and in Ord. No. 7 of 1834. — Cp. (1833), Morg. Dig. § 33; (1835), Aust. 11. Where property was purchased by a number of persons, and subsequently certain of these persons transferred their shares to the remainder, and the instrument of transfer set forth the particular shares held by each of the transferees, it was held that such instrument did not satisfy the requirements of this section. — *De Silva v. de Silva*, (1902), 3 Br. 136; 6 N. L. R. 92. Oral evidence is not admissible to prove the existence of a partnership with a view to make an alleged partner liable for the debts of the partnership, or to recover profits, but is admissible to show the real nature of the agreement, even though such agreement amounts to a partnership. — *Silva v. Nelson*, (1898), 1 Br. 74. "My view of the latter part of subsection 4 of § 21 of Ord. No. 7 of 1840 is that it was intended that the Courts should not enforce any alleged obligations to become or act as partner, or any agreement in respect of an alleged partnership between persons assuming to be partners without an agreement for partnership in writing; but that if persons had acted as without an agreement in writing they should not be allowed to take advantage of their own wrong in escaping accounting for money received on behalf of the professed partnership on the plea that there was no legal partnership in the terms of the Ordinance." — *Per Middleton, J., in Kanappa Chetty v. Walathappa Chetty*, (1903), 7 N. L. R. 339. Parol evidence is not admissible to establish a partnership where a person seeks to compel another to act as his partner. But when a partnership has ceased to exist parol evidence is admissible in an action on account. — (1871), Van. 195; *Bawa v. Mohamado Casim*, (1891), 1 C. L. R. 53; *Mendis v. Peiris*, (1891), 1 C. L. R. 98; *Pate v. Pate*, (1907), 11 N. L. R. 254. Cp. *Weerappa Chetty v. Alagappa Chetty*, (1884), 6 S. C. C. 119; criticising *Bawa v. Mohamado Casim*, (1891), 1 C. L. R. 53. And see *Annamali Chetty v. Shand*, (1900), 1 Br. 37. *Semble*, a stipulation by an agent for a share in the profits of a business, in lieu of commission, is not within the terms of this subsection. — (1837), Morg. Dig. § 494. An agreement to share in the profit and loss of a charter party where the sum agreed to be advanced for the ship's disbursements is uncertain, though £200 is actually advanced, need not be in writing under this subsection. — *Reid v. Saunders*, (1857), 3 Lor. 112.

Proviso; commencement of Ordinance. 22. Provided always that nothing in the preceding clause shall be construed to exempt any deed or instrument in any manner affecting land or other immoveable property from being required for that purpose to be executed and attested in manner declared by the second clause of this Ordinance. And it is further enacted that this Ordinance shall commence and take effect upon and from the first day of February, One thousand eight hundred and forty.

b) No. 21 of 1866. An Ordinance relating to the Law of Partnership (24th December, 1866).²⁾

Commencement. 1. This Ordinance shall come into operation from the date of the passing thereof.

¹⁾ The law relating to partnership is contained in Ords. No. 7 of 1840, No. 21 of 1866, and in the Imperial *Partnership Act, 1890*, (53 & 54 Vic. c. 39), adopted by Ord. No. 22 of 1866, § 1. For cases on the law of partnership, see notes to the three Ordinances above indicated. The law relating to limited partnerships is contained in the Imperial *Limited Partnerships Act, 1907*, (7 Edw. 7, c. 24.). — ²⁾ The references in the notes (Imp.) are to the Imperial *Partnership Act, 1890*, (53 & 54 Vic. c. 39).

Interpretation of "person." 2. In the construction of this Ordinance, the word "person" shall include a partnership firm, a joint stock company, and a corporation.

Lender not a partner by advancing money for share of profits. 3. The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not, of itself, constitute the lender a partner with the person carrying on such trade or undertaking, or render him responsible as such.

Imp. § 2 (3) (d).

Remuneration of agents, etc., by profits not to make them partners. 4. No contract for the remuneration of a servant or agent or any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Imp. § 2 (3) (b).

Certain annuitants not to be deemed partners. 5. No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of, or to be subject to, any liabilities incurred by such trader.

Imp. § 2 (3) (c).

Receipts of profits, etc., not to make the seller a partner. 6. No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall, by reason only of such receipt, be deemed to be a partner of, or to be subject to, the liabilities of the person carrying on such business.

Imp. § 2 (3).

In case of bankruptcy, etc., lender not to rank, as respects profit or interest, with other creditors. 7. In the event of any such trader as aforesaid being a bankrupt or insolvent, or taking the benefit of any Act for the relief of insolvent debtors, or entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of the profits or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied.

Imp. § 3.

Companies.

a) No. 4 of 1861. An Ordinance to promote the Establishment of Joint Stock Companies, both with unlimited and limited Liability (4th September, 1861).¹⁾

Commencement. 1. This Ordinance shall come into operation from the date of the passing thereof.

Imp. § 296.

Short title. 2. This Ordinance may be cited for all purposes as *The Joint Stock Companies Ordinance, 1861*.

Imp. § 295.

Banking and insurance companies exempted. 3. This Ordinance shall not apply to persons associated together for the purposes of banking or insurance.

Imp. § 1. Banking companies may now be incorporated under this Ordinance. — Ord. No. 2 of 1897.

Part I. Registration.

Registration. 4. The registration of companies shall be conducted as follows, that is to say: 1. The Governor may from time to time appoint such registrars, assistant registrars, clerks, and servants as he may think necessary for the registration of companies under this Ordinance, and remove them at pleasure; 2. The Governor

¹⁾ The reference in the notes (Imp.) are to the *Imperial Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69).

may, with the advice and consent of the Executive Council, make regulations with respect to the duties to be performed by any such registrars, assistant registrars, clerks, and servants as aforesaid, and may determine the place or places at which offices for the registration of companies are to be established; 3. There shall be paid to any registrar, assistant registrar, clerk, or servant that may hereafter be employed in the registration of joint stock companies, such salary as the Governor may direct: Provided that it shall be lawful for the Governor to direct the payment to them of fees instead of salary, and to apportion such fees amongst the officers respectively as he may think fit; 4. There shall be paid to the Registrar of Joint Stock Companies in respect of the several matters mentioned in the Table marked A in the Schedule hereto the several fees therein specified; 5. Every person may inspect the documents kept by the Registrar, and may require a copy or extract of any document or part of a document to be certified by the Registrar, and there shall be paid for such inspection and for such certified copy or extract the respective fees specified in the said Table A. Such certified copy or extract shall be prima facie evidence of the matters therein contained in all legal proceedings whatever; 6. Excepting in case the Governor shall otherwise direct, all fees authorized by and paid under this Ordinance shall be paid into the Public Treasury and carried to account as the Governor shall appoint; 7. Whenever any act is herein directed to be done to or by the Registrar of Joint Stock Companies such act shall, until the Registrar of Joint Stock Companies shall have been appointed, be done to or by the Registrar of the Supreme Court, who shall until such appointment have the powers and be subject to the liabilities given to and imposed upon the Registrar of Joint Stock Companies.

Imp. § 243.

Part II. Constitution and Incorporation of Companies and Associations; Registry.

Company formed by memorandum of association and registration. 5. Seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Ordinance in respect of registration and incorporation, procure themselves to be formed into an incorporated company with or without limited liability.

Imp. § 2.

Penalty on unregistered partnerships exceeding a certain number. 6. [As amended by Ord. No. 9 of 1867, § 2.] No company, association, or partnership consisting of more than twenty persons, shall after the passing of this Ordinance, carry on any trade, or business having for its object the procurement of gain to the company, association, or partnership, or to the individual members thereof, unless it is registered as a company under *The Joint Stock Companies Ordinance, 1861*, or is incorporated or otherwise legally constituted by some Act of Parliament, Royal Charter, or Letters Patent, or is registered as a company under or by virtue or in pursuance of any Act of Parliament relating to joint stock companies; and if any persons do so carry on business contrary to this provision, every person so acting shall be severally liable for the payment of the whole debts of the company, association, or partnership, and may be sued for the same without the joinder in the suit of any other member of the company, association, or partnership.

Imp. § 1 (2).

Matters required to be prescribed by memorandum of association. 7. The memorandum of association shall contain the following particulars, that is to say: 1. The name of the proposed company; 2. The town in which the registered office of the company is to be established; 3. The objects for which the proposed company is to be established; 4. The liability of the shareholders, whether it is to be limited or unlimited; 5. The amount of the nominal capital of the proposed company; 6. The number of shares into which such capital is to be divided, and the amount of each share subject to the following restriction: that in the case of a company formed with limited liability, and hereinafter called a limited company, the word "limited" shall be the last word in the name of the company.

Imp. §§ 3—5.

Prohibition against identity of names in incorporated companies. 8. [As amended by Ord. No. 3 of 1893, § 4.] No company shall be incorporated under a name identical with that by which any other company shall have been incorpor-

ated, or so nearly resembling the same as to be calculated to deceive; and if any company, through inadvertence or otherwise, is incorporated by a name identical with that by which a company shall have been previously incorporated, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company shall, with the sanction of the Governor, change its name; and upon such change being made the Registrar shall enter the new name on the register in the place of the former name; but no such alteration of name shall affect any rights or obligations of the company, or of any member thereof, or render defective any legal proceedings instituted or to be instituted by or against the company; and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8 (1, 2).

Power of company to change name. 8A. [As added by Ord. No. 3 of 1893, § 5.] Any company with the sanction of a special resolution of the company passed in manner hereinafter mentioned, and with the approval of the Governor, testified in writing under the hand of the Colonial Secretary or of one of the Assistant Colonial Secretaries, may change its name, and upon such change being made, the Registrar shall enter the new name in the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8 (3—5).

Form of memorandum of association. 9. The memorandum of association shall be in the form marked B in the Schedule hereto, or as near thereto as circumstances admit, and it shall, when the company is incorporated, bind the company and the shareholders therein as if there were in such memorandum contained on the part of every shareholder, his heirs, executors, and administrators, a covenant to conform to all the regulations of such memorandum, subject to the provisions of this Ordinance.

Imp. Sched. III.

Shares to be taken by subscribers of memorandum of association. 10. Every subscriber of the memorandum of association shall take one share at least in the company. The number of shares taken by each subscriber shall be set opposite his name in such memorandum of association, and upon the incorporation of the company he shall be entered in the register of shareholders hereinafter mentioned as a shareholder to the extent of the shares he has taken.

Imp. §§ 3—5.

Special regulations may be prescribed by articles of association. 11. The memorandum of association may be accompanied by, or have annexed thereto or indorsed thereon, articles of association, signed by the subscribers to the memorandum of association, and prescribing regulations for the company; but if no such regulations are prescribed, or so far as the same do not extend to or modify the regulations contained in the Table marked C in the Schedule hereto, such last-mentioned regulations, shall, so far as the same are applicable, be deemed to be the regulations of the company, and shall bind the company and the shareholders therein to the same extent as if they had been inserted in articles of association and such articles had been registered.

Imp. §§ 10, 11.

Effects of articles of association. 12. The articles of association shall, when the company is incorporated, bind the company and the shareholders therein to the same extent as if there were in such articles contained, on the part of every shareholder, his heirs, executors, and administrators, a covenant to conform to all the regulations of such articles, subject to the provisions of this Ordinance.

Imp. § 14 (1).

Stamp on memorandum of association and articles of association and use of printed copies. 13. The memorandum of association shall bear a stamp of five pounds, and the articles of association shall bear a stamp of one pound. Any person signing a printed copy of the memorandum of association or articles of association

shall be deemed to have signed such memorandum and articles of association respectively, and where the proper stamp has been duly fixed on such memorandum of association or articles of association it shall not be necessary to stamp any printed copy so signed. The execution by any person of the memorandum of association or articles of association shall be attested by one witness at the least, and attestation by one witness shall be sufficient attestation.

Imp. § 12.

Subdivision and consolidation of existing shares; special resolution to be embodied in the memorandum of association. 13A. [As added by Ord. No. 17 of 1907, § 5.] Any company registered under this Ordinance may by special resolution so far modify the conditions contained in its memorandum of association if authorized so to do by its regulations as originally framed, or as altered by special resolution, as: a) By subdivision of its existing shares or any of them to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association; b) By consolidation of its existing shares or any of them to divide its capital or any part thereof into shares of larger amount than is fixed by its memorandum of association. Provided that in the subdivision or consolidation of the existing shares the proportion between the amount which is paid and the amount, if any, which is unpaid on each share of reduced or increased amount shall be the same as it was in the case of the existing share or shares from which the share of reduced or increased amount is derived. 2. The statement of the number and amount of the shares into which the capital of the company is divided contained in every copy of the memorandum of association issued after the passing of any such special resolution shall be in accordance with such resolution; and any company which makes default in complying with provisions of this subsection shall incur a penalty not exceeding ten rupees for each copy in respect of which such default is made, and every director and manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 41.

How to obtain incorporation. 14. [As amended by Ord. No. 13 of 1905, § 5, and Ord. No. 17 of 1907, § 6.] In order to obtain incorporation, the memorandum of association, together with the articles of association, if any, shall be delivered to the Registrar, who shall transmit the same to the Attorney-General for report, and shall, upon payment to him of the cost of publication, cause the same to be published in the *Government Gazette* in three consecutive numbers. After such publication the Registrar, if the Attorney-General certifies that there is no legal impediment to the incorporation of the company, shall declare the company to be incorporated by indorsing on the memorandum of association a declaration in the form following:

Whereas the subscribers to this memorandum have done all things to entitle them to incorporation as a company with limited (or unlimited, as the case may be) liability: Now know ye that I, A. B., Registrar of Companies, do, in terms of section 14 of *The Joint Stock Companies' Ordinance, 1861*, as amended by section 5 of *The Public Business Ordinance, 1905*, hereby declare the said subscribers and their successors to be incorporated as the _____ Company (Limited) under the provisions of *The Joint Stock Companies' Ordinance, 1861*.

This

day of

(Signed)

Registrar of Companies.

The Registrar shall thereupon register the memorandum of association with the declaration endorsed thereon and the articles of association.

Certificate of incorporation issuable to any party. 15. The Registrar shall, on payment of five shillings, issue a certificate of incorporation of any company to any person applying for the same, and such certificate shall be admissible in evidence.

Imp. § 243 (6, 7).

Effect of registration. 16. Upon the declaration of incorporation being registered as aforesaid, the subscribers to the memorandum of association, together with such other persons as may from time to time become shareholders in the company, shall thereupon be a body corporate by the name prescribed in the memorandum of association and declaration of incorporation, having a perpetual succession and a common seal, with power to hold lands, but with such pecuniary liability on the part of the shareholders as is hereinafter mentioned. The declaration of incorporation shall be conclusive evidence that all the requisitions of this Ordinance in respect of incorporation have been complied with, and the date of

such declaration shall be deemed to be the date of the incorporation of the company.

Imp. §§ 16, 17. As to form of appearance in suits, see *Singer Manufacturing Co. v. Sewing Machines Co., Ltd.*, (1893), 2 C. L. R. 200.

Directors to be liable for debts, if dividend be paid when the company is known by them to be insolvent. 17. No dividends shall be payable except with the sanction of the directors; and if they shall declare and pay any dividend when the company is known by them to be insolvent, or any dividend the payment of which would to their knowledge render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted, so long as they shall respectively continue in office: Provided always that the amount for which they shall all be so liable shall not exceed the amount of such dividend, and that if any director shall object thereto and shall file his objection in writing with the clerk of the company, he shall be exempted from the said liability.

Issue of shares by company. 18. As soon as a certificate of incorporation has been granted the company may issue certificates of shares to the subscribers to the memorandum of association, and to all other persons to whom shares may be allotted, of such number and amount as may be prescribed by the memorandum of the association, but not of any greater number or amount. The shares so issued shall be moveable property, and shall not be of the nature of immoveable property, and each share shall be distinguished by its appropriate number.

Imp. §§ 16, 22, 25. Share certificates are subject to a stamp duty of 5 cents on each rs. 100 of the face value of the shares, scrip, stock, or debenture stock to which the certificate relates. But certificates issued upon a subdivision or consolidation of existing shares, or issued in lieu of certificates that have been lost or destroyed are exempt from this duty. — Ord. No. 22 of 1909, Sched. By notification in the *Government Gazette*, the Governor, with the advice of the Executive Council, may authorize any joint stock company incorporated under *The Joint Stock Companies' Ordinances, 1861 to 1907*, or any Ordinance for the time being in force relating to the incorporation and registration of joint stock companies in Ceylon, to compound for the payment of stamp duty payable on share certificates specified in schedule B to this Ordinance on the following conditions:

1. That in the case of a joint stock company now incorporated issuing new certificates upon a new issue of shares out of capital, whether original or increased, the company shall forward to the Commissioner of Stamps a statement signed by the secretary or a director of the company setting forth the total face value of the shares forming the new issue, and shall pay to the Commissioner of Stamps a duty of five cents for every one hundred rupees of the said new issue. 2. That in the case of a joint stock company hereafter incorporated the company shall forward to the Commissioner of Stamps a statement signed by the secretary or a director of the company setting forth the total face value of the shares forming any issue, and shall pay to the Commissioner of Stamps a duty of five cents for every one hundred rupees of such issue. 3. That in the case of a joint stock company creating or issuing debenture stock, the company shall forward to the Commissioner of Stamps a statement signed by the secretary or a director of the company setting forth the total value of the debenture stock to be created and issued, and shall pay to the Commissioner of Stamps a duty of five cents for every one hundred rupees of such debenture stock. 4. That every share certificate issued under the above conditions shall bear on its face a certificate under the hand of the secretary of the company that the stamp duty has already been paid in pursuance of this section. Such certificate shall be as nearly as circumstances permit in the following form: It is hereby certified that the stamp duty payable in respect of the capital issued has been commuted in terms of section 5 of *The Stamp Ordinance, 1909*. All share certificates, the payment of stamp duty payable whereon shall have been compounded for as aforesaid, shall be admitted for all purposes to be good and available in law as if duly stamped. — Ord. No. 22 of 1909, § 5. Where shares are sold in execution, the District Judge, and not the Fiscal, should sign the transfer. — *Fonseka v. Andree* (1881), 4 S. C. C. 72.

Register of shareholders.

Register of shareholders. 19. Every company registered under this Ordinance, hereinafter referred to as "the company," shall cause to be kept in one or more books a register of shareholders, and there shall be entered therein the following particulars: 1. The names, addresses, and occupations, if any, of the shareholders in the company, and the shares held by each of them, distinguishing each share by its number; 2. The amount paid on the shares of each shareholder; 3. The date at which the name of any person was entered in the register as a shareholder; 4. The date at which any person ceased to be a shareholder in respect of any share.

Imp. § 25.

Annual list of shareholders on register. 20. [As amended by Ord. No. 18 of 1909, § 2.] Once at the least in every year a list shall be made of all persons who

on the fourteenth day succeeding the day on which the ordinary general meeting of the company, or if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are holders of shares in the company; and such list shall state the names, addresses, and occupations of all the persons therein mentioned and the number of shares held by each of them, and shall contain a summary specifying the following particulars: 1. The amount of the nominal capital of the company and the number of shares into which it is divided; 2. The number of shares taken from the commencement of the company up to the date of the summary; 3. The amount of calls made on each share; 4. The total amount of calls that have been received; 5. The total amount of calls unpaid; 6. The total amount of shares forfeited. The above list and summary shall be contained in a separate part of the register, and shall be in the form marked D in the Schedule hereto, or as near thereto as circumstances admit; such list and summary shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy thereof, authenticated by the seal of the company, shall forthwith be forwarded to the Registrar, and any person may inspect and take copies of the same, subject to the regulations under which a person is hereinafter declared to be entitled to inspect and take copies of any documents kept by the Registrar. The Registrar shall, on receipt of the list and summary, make a record of the receipt thereof, and a fee of two rupees and fifty cents shall be payable in respect of such record.

Imp. § 26 (1—4).

Penalty on company not keeping a proper register. 21. [As amended by Ord. No. 3 of 1893, § 6.] If any company registered under this Ordinance makes default in keeping a register of shareholders or in sending a copy of such list and summary as aforesaid to the Registrar, in compliance with the foregoing rules, such company shall incur a penalty not exceeding five pounds for every day during which such default continues. And every director or manager of the company who shall knowingly and wilfully authorize or permit a contravention of this section shall incur the like penalty.

Imp. § 26 (5).

Restrictive definition of shareholder. 22. No notice of any trust, express, or implied, or constructive, shall be entered on the register, or receivable by the company; and every person who has accepted any share in a company registered under this Ordinance, and whose name is entered in the register of shareholders, and no other person (except a subscriber to the memorandum of association in respect of the shares subscribed for by him), shall for the purposes of this Ordinance be deemed to be a shareholder.

Imp. § 27.

Transfer of shares. 23. The transfer of any share in the company shall be in the form marked E in the Schedule hereto, or to the like effect, and shall be executed both by the transferor and transferee. The transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

The transfer of shares in companies is subject to a stamp duty, payable by the transferor.
— Ord. No. 22 of 1909.

Certificate of shares. 24. A certificate under the common seal of the company, specifying any share or shares held by any shareholder, shall be prima facie evidence of the title of the shareholder to the share or shares therein specified.

Imp. § 23.

Calls a debt to company. 25. The amount of calls for the time being unpaid on any share shall be deemed to be a debt due from the holder of such share to the company.

Inspection of register. 26. [As amended by Ord. No. 3 of 1893, § 7.] The register and annual list of shareholders, commencing from the incorporation of the company, shall be kept at the registered office of the company hereinafter mentioned. Except when the register is closed as hereinafter mentioned, it shall during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection) be open to the inspection of any shareholder gratis, and to the inspection of any other person on the payment of one shilling or such less sum as the company may prescribe for each inspection; and every such shareholder or other

person may require a copy of such register, or of any part thereof, on payment of sixpence for every hundred words required to be copied. If such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues. And every director and manager of the company who shall knowingly authorize or permit such refusal shall incur the like penalty.

Imp. § 30.

Power to close register. 27. The company may, upon giving notice by advertisement in the *Government Gazette*, close the register of shareholders for any time or times not exceeding on the whole twenty-one days in each year, and the period during which the books are closed shall not be reckoned as part of the time within which a transfer is to be registered.

Imp. § 31.

Power of limited company to convert paid up shares into stock. 28. Any limited company may by special resolution convert into stock any shares which have been fully paid up, and upon such conversion being made all the provisions of this Ordinance which require or imply that the capital of the company is divided into shares of any fixed amount, and distinguished by numbers, and which require the company to keep a register of shareholders, or to make an annual list of shareholder in the register, shall cease as to so much of the capital as has been so converted into stock.

Imp. § 41.

Company to give notice of conversion of capital into stock. 29. Any company that has converted any portion of its capital into stock shall give notice of such conversion, specifying the shares so converted, to the Registrar of Joint Stock Companies, within fifteen days from the date of the last of the meetings at which the resolution was passed by which such conversion was authorized, and the Registrar shall forthwith record the fact of such conversion. If such notice is not given within the period aforesaid the company shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues.

Imp. § 42.

Register of holders of stock. 30. Any company that has converted any portion of its capital into stock shall keep at the registered office of the company a register of the names and addresses of the persons for the time being entitled to such stock, and such register shall be open to inspection in the manner and subject to the penalties in and subject to which the register of shareholders is directed to be kept open.

Imp. § 43.

Remedy for improper entry or omission of entry in the register of stock. 31. If the name of any person is without sufficient cause entered or omitted to be entered in the register of stock of any company, such person, or any holder of stock in the company, may apply to have the register rectified in manner directed by the 32d section.

Imp. § 32.

Remedy for improper entry or omission of entry in register. 32. If the name of any person is without sufficient cause entered or omitted to be entered in the register of shareholders of any company, such person or any shareholder of the company may, by motion in the District Court of Colombo, apply to such Court for an order that the register may be rectified; and the Court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion and any damages the party aggrieved may have sustained; and if the company makes default or is guilty of unnecessary delay in registering any transfer of shares, they shall be responsible to any person injured by such default or delay for the amount of damage he may thereby have sustained; and the Court may, in any proceeding taken under this clause, decide on any question relating to the title of any person who is a party to such proceedings to have his name entered in or erased from the register, whether such question arises between two or more holders or alleged holders of shares or stock, or between any holders or alleged holders of shares or stock and the company, and generally the Court may in such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register.

Imp. § 32.

Register to be evidence. 33. The register of shareholders shall be evidence of any matters by this Ordinance directed or authorized to be inserted therein.

Imp. § 33.

Copies of memorandum and articles of association to be given to shareholders.

34. [As amended by Ord. No. 3 of 1893, § 8.] Copies of the memorandum of association and articles of association shall be forwarded to every shareholder at his request, on payment of the sum of one shilling for each copy, or such less sum as may be prescribed by the company. And if any company make default in forwarding a copy of the memorandum of association, if any, to a member in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding ten rupees.

Imp. § 18.

Part III. Management and Administration of Companies.

General.

Registered office of company. 35. The company shall have a registered office, to which all communications and notices may be addressed. If any company registered under this Ordinance carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day on which business is so carried on.

Imp. § 62 (1, 3).

Change of registered office. 35A. [As added by Ord. No. 17 of 1907, § 4.]

1. Any company registered under this Ordinance may by special resolution so far modify the conditions contained in its memorandum of association as to remove its registered office from the town mentioned in its memorandum of association as being the town in which its registered office is to be established and establish it within any other town in the Island. 2. The statement of the town in which the registered office of the company is to be established contained in every copy of the memorandum of association issued after the passing of any such special resolution shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding ten rupees for each copy in respect of which such default is made, and every director and manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 62 (2).

Notice of situation of registered office. 36. Notice of the situation of such registered office and of any change therein shall be given to the Registrar and be recorded by him; until such notice is given the company shall not be deemed to have complied with the provisions of this Ordinance with respect of having a registered office.

Imp. § 62 (2).

Publication of name by a limited company. 37. Every limited company registered under this Ordinance shall paint or affix, and shall keep painted or affixed its name in the English, Sinhalese, and Tamil languages on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name in the English language engraven in legible characters on its seal; and shall have its name mentioned in the English language, in legible characters, in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Imp. § 63 (1).

Penalties on non-publication of name. 38. If any limited company registered under this Ordinance does not paint or affix, and keep painted or affixed, its name in manner aforesaid, it shall be liable to a penalty not exceeding five pounds for not painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any officer of such company, or any person on its behalf, uses any seal purporting to be a seal of the company, whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such company, or signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or issues or authorizes to be issued

any bill of parcels, invoice, receipt, or letter of credit of the company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty not exceeding fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Imp. § 63 (2, 3).

General meeting of company. 39. A general meeting of the company shall be held once at the least in every year.

Imp. § 64.

What accounts to be kept. 40. The directors shall cause true accounts to be kept of the stock in trade of the company, of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place, and of the credits and liabilities of the company.

Imp. Sched. I. Table A, § 103.

Transmission of balance sheets to Registrar. 41. [As amended by Ord. No. 18 of 1909, § 3.] A balance sheet shall be made out and forwarded to the Registrar of Joint Stock Companies within twelve months after the incorporation of the company. Thereafter a balance sheet shall be prepared and forwarded in each year to the Registrar, together with the list of shareholders and summary required by section 20 to be so forwarded. Such balance sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to Table C in the Schedule hereto, or as near thereto as circumstances shall admit. The Registrar shall on receipt of the balance sheet make a record of the receipt thereof, and a fee of two rupees and fifty cents shall be payable in respect of such record.

Imp. § 26.

Balance sheet to be signed and certified by the directors. 42. The balance sheet shall be signed by the directors, or any three or more of them, who shall certify at the foot thereof that the same, to the best of their belief, contains a true account of the capital and liabilities and of the property and assets of the company.

Imp. § 26.

No dividend payable except out of profits. 43. No dividend shall be payable except out of the profits arising from the business of the company, including interest on capital.

Audit. 44. The accounts of the company shall be examined, and the correctness of the balance sheet ascertained, by one or more auditor or auditors, who shall certify at the foot of such balance sheet that the same, to the best of his or their belief, contains a true account of the capital and liabilities and of the property and assets of the company, or make special report thereon as he or they think necessary.

Imp. §§ 109—113.

Inspection of balance sheet and of auditors' report. 45. A copy of every balance sheet and of the report thereon by the auditors shall be open to inspection in the same manner as the register of shareholders kept at such office.

Imp. § 113 (3).

Power of company to alter regulations by special resolutions. 46. Any company registered under this Ordinance may in general meeting from time to time, by such special resolution as is hereinafter mentioned, alter and make new provisions in lieu of or in addition to any regulations of the company contained in the articles of association: Provided always that such resolutions so made shall be reported to the Registrar to be registered by him.

Imp. § 13.

Definition of special resolution. 47. [As amended by Ord. No. 3 of 1893, § 9.] A resolution shall be deemed to be a special resolution of the company whenever the same has been passed by three-fourths in number and value of such shareholders of the company for the time being entitled to vote as may be present in person or by proxy (in cases where, by the regulations of the company, proxies are allowed) at any meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such shareholders for the time being entitled to vote as may be present in person or by proxy at a subsequent meeting of which notice specifying the intention to propose such confirmation has been duly given, and held at an interval of not less than fourteen days nor more than two months from the date of the meeting at which such

special resolution was first passed. Unless a poll is demanded by at least five shareholders, a declaration of the chairman of any such meeting as is mentioned in this section that a special resolution has been carried or confirmed shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. Notice of any meeting shall for the purposes of this section be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company.

Imp. § 69.

Registry of special resolutions. 48. A copy of any special resolution that is passed by any company registered under this Ordinance shall be forwarded to the Registrar and recorded by him; if such copy is not so forwarded within fifteen days from the date of the passing of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded.

Imp. § 70.

Copies of special resolutions. 49. A copy of any special resolution shall be given to any shareholder on payment of one shilling, or of such less sum as the company may direct.

Imp. § 70 (3).

Notice to Registrar of increase of capital. 50. The company, if authorized so to do by its regulations, may increase its nominal capital in manner directed by such regulations, but notice of any increase so made shall be given to the Registrar within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and the Registrar shall forthwith record the amount of such increase. If such notice is not given within the period aforesaid, the company shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues.

Imp. §§ 41—44.

Prohibition against carrying on business with less than seven shareholders. 51. If any company registered under this Ordinance carries on business when the number of its shareholders is less than seven for a period of six months after the number has been so reduced, then every person who is a shareholder in such company during the time that it so carries on business after such period of six months shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same without the joinder in the suit of any other shareholder.

Imp. § 115.

Evidence of proceedings of meetings. 52. The company shall cause minutes of all resolutions and proceedings of general meetings of the company to be duly entered in books to be from time to time provided for the purpose, and any such minutes as aforesaid, if signed by any person purporting to be the chairman of such meeting, shall be receivable in evidence in all legal proceedings, and until the contrary is proved every general meeting in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened.

Imp. § 71.

Legal instruments of company; contracts.

Contracts how made. 53. Contracts on behalf of any company registered under this Ordinance may be made as follows, that is to say: 1. Any contract which would be by law required to be in writing may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged. 2. Any contract which would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged. 3. Any contract which would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged.

Imp. § 76.

Deeds and other instruments.

Execution of deeds abroad. 54. Any company registered under this Ordinance may, by instrument or writing under their common seal, empower any person, either

generally or in respect of any specified matters, as their attorney to execute deeds on their behalf in any place; and every deed signed by such attorney on behalf of the company shall be binding on the company to the same extent as if it were under the common seal of the company.

Imp. § 78.

Promissory notes or bills of exchange. 55. A promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company registered under this Ordinance if made, accepted, or indorsed in the name of the company by any person acting under the express authority of the company.

Imp. § 77.

Mortgages registered under this Ordinance. 56. In any mortgage made by any company registered under this Ordinance there shall be implied the following covenants (unless words expressly negating such implication are contained therein), that is to say: a covenant on the part of the company to pay the money thereby secured, and interest thereon, at the time and rate therein mentioned, a covenant that they have power to mortgage the property and that the same is free from incumbrances, and such mortgage may be in the form marked F in the Schedule hereto annexed, or as near thereto as circumstances admit.

Imp. § 93.

Conveyances registered under this Ordinance. 57. In any conveyance made by any company registered under this Ordinance there shall be implied (unless words expressly negating such implication are contained therein) the following covenants on the part of the company, that is to say: a covenant that, notwithstanding any act or default done by the company, they were at the time of the execution of such conveyance possessed of the lands or premises thereby conveyed as their own absolute property, free from incumbrances occasioned by them, or otherwise for such estate or interest as therein expressed to be conveyed, free from incumbrances occasioned by them; a covenant that the person to whom such lands or premises are conveyed, his heirs, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the company and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the company and their successors from all incumbrances occasioned by the company; a covenant to warrant and defend the title of the person to whom such lands or premises are conveyed, his heirs, executors, administrators, or assigns, and to grant at its own expense such further deeds as may be necessary to render such conveyance effectual.

Examination of affairs of company.

Examination of affairs of company by inspectors appointed by the Governor. 58. Upon the application of one-third in number and value of the shareholders of any limited company registered under this Ordinance, the Governor, with the advice and consent of the Executive Council, may appoint one or more competent inspectors to examine into the affairs of the company, and to report thereon in such manner as the Governor, with the advice aforesaid, directs.

Power of inspectors. 59. It shall be the duty of all officers and agents of the company to produce, for the examination of the inspectors, all books and documents in their custody or power. Any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any such book or document, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence.

Imp. § 109.

Result of examination, how dealt with. 60. Upon the conclusion of the examination the inspectors shall report their opinion to the Governor, who shall direct the same to be forwarded to the Registrar. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the shareholders upon whose application the inspectors were appointed.

Imp. § 109.

Power of company to appoint inspectors. 61. Any company, whether limited or unlimited, registered under this Ordinance, may in general meeting appoint inspectors for the purpose of examining into the affairs of the company. The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor, with this exception, that instead of making their report to the Governor they shall make the same in such manner and to such

persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Governor. All expenses of and incidental to any examination to be made by the inspectors so appointed shall be defrayed by the company.

Imp. § 110.

Report of inspectors to be evidence. 62. A copy of the report of any inspectors appointed under this Ordinance, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible as evidence in any legal proceeding.

Imp. § 111.

Notices.

Service of notice on company and Registrar. 63. [As amended by Ord. No. 3 of 1893, § 10.] Any summons or notice requiring to be served upon the company may, except in cases where a particular mode of service is directed, be served by leaving the same with any director, secretary, or other principal officer of the company at their registered office, or by sending it through the post by letter addressed to such company, and any notice to the Registrar may be served by sending it to him through the post by letter, or by delivering it to him, or by leaving it for him at his office.

Imp. § 116.

Rules as to notices by letter. 64. Notices by letter shall be posted in such time as to admit of the letter being delivered in the due course of delivery, within the period, if any, prescribed for the giving of such notice, and in proving such service it shall be sufficient to prove that such notice was properly directed, and that it was put in the post office at such time as aforesaid.

Authentication of notice of company. 65. Any summons, notices, writ, or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorized officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Imp. § 116.

Security for costs.

Provision as to costs in actions brought by or against certain limited companies. 66. When a limited company is party to any suit, the judge, if it be proved to his satisfaction that there is reason to believe that if their opponent be successful the assets of the company will be insufficient to pay his costs, may require sufficient security to be given for such costs, and (if the limited company be plaintiff) he may stay all proceedings until such security be given, or (if the limited company be defendant) he may refuse to admit the defence, and after the expiration of a stated time to be named by him to enable the company to furnish such security may, on their still failing to give security, treat the case as an undefended one.

Imp. § 278.

Part IV. Winding-up.

Preliminary.

Application of Part IV. of Ordinance. 67. The provisions of this Ordinance relating to the winding-up of companies shall apply to all companies registered under this Ordinance, and not to any other companies.

Imp. § 122.

Definition of "the Court." 68. The expression "the Court," as used in this Ordinance, shall mean the District Court having jurisdiction in the place in which the registered office of the company is situate; and any Court to which jurisdiction is given by this Ordinance shall, in addition to its ordinary powers have the same power of enforcing any orders made by it in pursuance of this Ordinance as it has in relation to other matters within the jurisdiction of such Court respectively.

Imp. § 285.

Liability of present shareholders in respect of debts. 69. In the event of any company being wound up by the Court or voluntarily the existing shareholders shall be liable to contribute to the assets of the company to an amount sufficient to pay the debts and liabilities of the company, and the costs, charges, and expenses of

winding up the same, with this qualification, that if the company is limited no contribution shall be required from any shareholder exceeding the amount, if any, unpaid on the shares held by him, and his proportion of the costs, charges, and expenses.

Imp. § 123.

Liability of former shareholders in a company other than a limited company with respect to debts. 70. In the event of any company, other than a limited company, being wound up by the Court or voluntarily, any person who has ceased to be a shareholder within the period of three years prior to the commencement of the winding-up shall be deemed, for the purposes of contribution towards payment of the debts of the company, and the costs, charges, and expenses of winding up the same, to be an existing shareholder, and shall have in all respects the same rights and be subject to the same liabilities to creditors as if he had not so ceased to be a shareholder, with this exception, that he shall not be liable in respect of any debt of the company contracted after the time at which he ceased to be a shareholder.

Imp. § 123.

Liability of former shareholders in a limited company with respect to debts. 71. In the event of any limited company being wound up by the Court or voluntarily, any person who has ceased to be a holder of any share or shares within the period of one year prior to the commencement of the winding-up, shall be deemed for the purposes of contribution towards payment of the debts of the company, and the costs, charges, and expenses of winding up the same, to be an existing holder of such share or shares, and shall have in all respects the same rights and be subject to the same liabilities to creditors as if he had not so ceased to be a shareholder, with this exception, that he shall not be liable in respect of any debt of the company contracted after the time at which he ceased to be a shareholder.

Imp. § 123.

Commencement of winding-up of company defined. 72. The winding-up shall, if the company is wound up by the Court, be deemed to commence at the time of the presentation of such petition as is hereinafter required to be presented to the Court, and if the company is wound up voluntarily, be deemed to commence at the time of the passing of the resolution authorizing such winding-up.

Imp. §§ 139, 183.

Definition of contributory and legal character of his liability. 73. Any existing or former shareholder upon whom calls are authorized to be made by the fourth part of this Ordinance is hereinafter called "a contributory," and the representatives of any deceased contributory shall be liable in a due course of administration to the same extent as such contributory would be liable under the fourth part of this Ordinance, if alive.

Imp. §§ 124, 125.

Rights of contributories between themselves. 74. For the purpose of ascertaining the liability of existing and former shareholders as between themselves, the following rules shall be adopted in the absence of any express contract to the contrary, that is to say: 1. In the case of a company other than a limited company, every transferee of shares shall, in a degree proportioned to the shares transferred, indemnify the transferor against all existing and future debts of the company. 2. In the case of a limited company, every transferee shall indemnify the transferor against all calls made or accrued and due on the shares transferred subsequently to the transfer.

Winding-up by Court.

Circumstances under which company may be wound up by Court. 75. A company may be wound up by the Court under the following circumstances, that is to say: 1. Whenever the company in general meeting has passed a special resolution requiring the company to be wound up by the Court; 2. Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year; 3. Whenever the shareholders are reduced in number to less than seven; 4. Whenever the company is unable to pay its debts; 5. Whenever three-fourths of the capital of the company have been lost or become unavailable.

Imp. § 129.

Company when deemed unable to pay its debts. 76. A company shall be deemed to be unable to pay its debts: 1. Whenever a creditor to whom the company is indebted in a sum exceeding fifty pounds has served due notice on the company, by leaving at their registered office a demand under his hand requiring the company to

pay the sum so due, and the company have for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor; 2. Whenever satisfaction of a judgment, decree, or order of any court in favour of any creditor in any suit or other legal proceeding can not be obtained within ten days.

Imp. § 130.

Application for winding-up to be by petition. 77. Any application for the winding-up of a company shall be by petition, and there shall be filed or lodged at the time when such petition is presented an affidavit verifying the same. Such petition may, in cases where the company is unable to pay its debts, be presented either by a creditor or a contributory, but where any other ground is alleged for winding up the company, a contributory alone is entitled to present the petition.

Imp. § 137.

Course to be pursued by a Court on petition by a creditor. 78. Upon the hearing of any petition presented by a creditor the Court may dismiss such petition, with or without costs to be paid by the petitioner; or it may make an order directing the company on a day to be named in the order to pay or secure payment to the creditor of all moneys that may be proved due to him, together with such costs as the Court may direct; or the Court may, if it so thinks fit, on the hearing of such petition, make an order for winding up the company in the first instance, or such other order as it deems just.

Imp. § 141. The Court has a discretion to dismiss a petition for winding up a company, if it is satisfied that the petition is not made in good faith, or is founded on insufficient grounds. (Per curiam.) In the absence of fraud or collusion, after a resolution for winding up a company voluntarily, a shareholder is not entitled to a compulsory order for winding up. (Per Middleton, J.) — *Neina Markar v. Ceylon Standard Press Co., Ltd.*, (1904), 7 N. L. R. 251.

Order for winding up company on creditor's petition. 79. If at the expiration of the time named in such order such payment is not made, or security given, the Court may thereupon make an order or decree for winding up the company.

Course to be pursued by Court on petition of contributory. 80. Upon the hearing of a petition presented by a contributory the Court may dismiss such petition, with or without costs to be paid by the petitioner, or it may make an order or decree directing the company to be wound up, or such other order or decree as it deems just.

Effect of the order for winding up company. 81. After the date of such order or decree for winding up the company all suits and actions against the company shall, if the Court so orders, be stayed; no director or other officer of the company shall without the sanction of the Court dispose of any of the property or effects of the company, and no transfer of any shares shall be valid without the sanction of the Court. A copy of such order or decree shall forthwith be reported by the company to the Registrar, who shall make a minute thereof in his books relating to the company.

Imp. § 142.

Collection and application of assets. 82. As soon as may be after making an order or decree for winding up the company the Court shall cause the assets of the company to be collected, and applied in discharge of its liabilities, in a due course of administration.

Imp. § 163 (1).

Fraudulent preference. 83. Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would, if made or done by any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of any creditor of such trader, shall, if made or done by or against any company registered under this Ordinance, be deemed, in the event of an order being made for winding up such company, to have been made or done by way of undue or fraudulent preference of such creditor¹⁾ of such company, and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding up a company shall be deemed to correspond with the filing of a petition for adjudication of insolvency in the case of an individual trader, and any conveyance or assignment made by any company registered under this Ordinance of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

Imp. § 210.

Power of Court to examine persons suspected of having property of company. 84. Before or after an order for winding up the company has been made, any person

¹⁾ *Sic*; obviously "creditor."

known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company, may be compelled to give evidence, and to produce any books, papers, deeds, writings, or other documents in his custody or power, which may appear to the Court requisite to the full disclosure of any matters which the Court thinks necessary to be inquired into for the purpose of winding up the company, in the same manner as a witness may be compelled to give evidence and to produce documents in any action or suit depending in such Court.

Imp. § 174.

Penalty on falsification of books. 85. If any director, officer, or contributory of any company registered under this Ordinance destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud the creditors or contributories of such company, or any of them, every person so offending shall be deemed to be guilty of an offence, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Imp. § 216.

Power to arrest shareholder about to abscond or to remove or conceal any of his property. 86. Where an order has been made for winding up a company under the fourth part of this Ordinance, if upon the application of the official liquidator it appears to the Court having jurisdiction in the matter of such winding-up that there is probable cause for believing that any contributory to such company is about to quit the Island, or otherwise abscond or conceal himself, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, the Court may, by warrant directed to such person or persons as it thinks fit, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court may order. Any contributory who has been arrested, or whose goods or chattels have been seized under any such warrant as aforesaid, may, at any time after such arrest or seizure, apply to the Court that issued the warrant to discharge him from custody, or to direct the delivery to him of any books, papers, moneys, securities for money, goods, or chattels that may have been seized, and the Court may order his discharge, or the release of his goods, upon such terms and subject to such conditions as it deems fit.

Imp. § 176.

Attachments, sequestrations, and executions within three months of petition.

87. If any attachment, sequestration, or execution is issued against any company, by virtue whereof the property and effects of the company, or any of them, may be attached, sequestered, or taken in execution at any time within three months next before the filing or presentation of the petition for winding up the company, such attachment, sequestration, or taking in execution shall be void in favour of the liquidators of the company, as against the attaching, sequestering, or execution whether the same has been completely executed or not; except that such creditor shall, if the attachment, sequestration, or execution would have been valid but for this provision, be entitled to receive out of any money already realized his costs of suit, and of the attachment, sequestration, or execution or to proceed with the attachment, sequestration, or execution for the purpose of realizing such costs; but on satisfaction of such costs, or on tender of the amount by the liquidators to the creditor, it shall be lawful for the liquidators to recover the property so attached, sequestered, and taken in execution, and the proceeds of such property, or the residue thereof, as the case may be. If property seized upon such attachment, sequestration, or execution shall have already been sold, the proceeds shall be paid to the liquidators, less the costs of suit and of the attachment, sequestration, or execution.

Imp. § 211.

Books of company to be evidence. 88. All books, accounts, and documents of the company, and of the liquidators hereinafter mentioned, shall, as between the contributories of the company, be prima facie evidence of the truth of all matters therein contained and purporting to be therein recorded.

Imp. § 220.

Power of Court to make calls. 89. The Court may, at any time after making an order or decree for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, or the debts in respect of which the several classes of contributories are liable, make calls on all or any of the contributories to the extent of their liability for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company and the costs of winding it up; and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same, and every such call shall be deemed a debt due to the company.

Imp. § 166.

Recovery of calls. 90. Upon such calls being made the official liquidator or liquidators shall proceed immediately to collect the same, and shall monthly, or oftener, report to the Court the names of defaulters, together with the amounts remaining unpaid of the calls made upon them respectively, and thereupon the said Court shall order the payment of such calls or any of them within such time or times, and upon such notice or demand by advertisements or otherwise, as the said Court may think fit; and in case any contributory, whether subject to the ordinary civil jurisdiction of the Court or not, shall neglect to pay any part of the call within the time fixed by the Court for the payment thereof, and shall not within such time show to the Court sufficient cause for the non-payment thereof, the said Court may make an order upon such contributory for the payment of the amount due upon the call, and such order shall have the force and effect of a decree or judgment of the Court, and may be executed accordingly.

Calls may be made upon former shareholders in respect of shares. 91. The Court may at any time make calls upon any former holder of a share who is liable under section 70 or 71 of this Ordinance in respect of such share, as well as upon the existing holder of that share; but any payment made or obtained from any contributory in respect of a share shall operate for the benefit of every other contributory in respect of such share.

Payment of money into the bank. 92. All moneys received under the direction of the Court on account of the sale or conversion of any of the assets of the company, or in respect of calls made on any contributories, or of any other matter, with the exception of such balance, if any, as the official liquidators may, with the sanction of the Court, retain in their hands for the payment of current expenses, shall be paid into one of the banks as the Court may direct; and no money standing to such account shall be drawn except upon cheques signed in such manner as the Court directs.

Imp. § 167.

Power of the Court to grant injunction or interdict. 93. The Court may, at any time after the presentation of a petition for winding up a company, and either before or after making an order for winding up the same, upon the application of any creditor or contributory of such company, restrain further proceedings in any suit against the company, or appoint a receiver of the estate and effects of the company; it may also, by notice or advertisement, require all creditors to present and prove their claims within a certain time, or be precluded from the benefit of any distribution which may be made before such claim is proved.

Imp. § 140.

Power of Court to stay proceedings. 94. The Court may, at any time after an order has been made for winding up a company, upon the application of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Imp. § 144.

Power of court to adjust rights of contributories. 95. As soon as the creditors are satisfied the Court shall proceed to adjust the rights of the contributories amongst themselves, and to distribute any surplus that may remain amongst the parties entitled thereto; and for the purposes of such adjustment it may make calls on the contributories to the extent of their liability for the payment of such sums as it deems necessary; and it may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same. Nothing in this section shall pre-

clude any former shareholder entitled to indemnity under section 74 of this Ordinance from enforcing such indemnity by due course of law.

Imp. §§ 166 (2), 170.

Power of Court to order costs. 96. The Court may make such order as to the priority and payment out of the estate of the company of the costs, charges, and expenses incurred in winding up any company as it thinks just.

Imp. § 171.

Official liquidators.

Appointment of official liquidators. 97. For the purpose of conducting the proceedings in winding up a company and assisting the Court therein, there shall be appointed a person or persons to be called an official liquidator or official liquidators, and such appointment shall be made as follows, that is to say: 1. The Court having jurisdiction may, after requiring due security, should the Court deem such security necessary, appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidators; it may from time to time remove any person or persons so appointed, and fill up any vacancy occasioned by such removal, or by the death or resignation of any such appointee or appointees; if one person only is appointed, he shall have all the powers thereby given to several liquidators; if more persons than one are appointed, the Court shall declare whether any act hereby required or authorized to be done by the official liquidators may be done by all or any one or more of such persons. 2. The Court having jurisdiction shall, in the appointment of an official liquidator or official liquidators, consult the interest of both the creditors and contributories, and hear such creditors or contributories as it thinks fit to hear with respect to such appointment. It may, unless both the creditors and contributories concur in the appointment of a single liquidator, appoint one or more liquidator or liquidators to act on behalf of each of such parties. It may declare that in case of difference any act may be done by a majority of liquidators, or it may require the liquidators in all cases of difference to apply to the Court. It may do anything hereby authorized to be done, either upon the first appointment of a liquidator or at any subsequent stage of the winding-up; but notwithstanding anything herein contained, it shall not be obligatory on the Court to appoint more than one liquidator.

Imp. § 149.

Style and duties of official liquidators. 98. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he or they is or are appointed, and not by his or their individual name or names; he or they shall take into his or their custody all the property and effects of the company, and shall perform such duties in reference to the winding-up of the company as may be imposed by the Court.

Imp. § 149 (9).

Powers of official liquidators. 99. The official liquidator or liquidators shall have power with the sanction of the Court to do the following things: to bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company; to carry on the business of the company, so far as may be necessary for the beneficial winding-up of the same; to sell the immoveable and moveable property of the company by public or private contract, with power, if they think fit, to transfer the whole thereof to any person or company, or to sell the same in parcels; to execute in the name and on behalf of the company all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal; to refer disputes to arbitration, and compromise any debts or claims. Such power of compromising debts and claims shall be deemed to extend to the compromise of any calls or debts due from any contributory or alleged contributory to the company on receipt of a smaller sum in lieu of a greater, or upon such terms as may be agreed upon, with power to the liquidators to take any security for any calls or debts so due, and to give effectual discharges on completion of such compromise: Provided that no such compromise shall be made by any official liquidator without giving such notice to creditors, and subject to such conditions as to obtaining the consent of creditors, or any portion of them, as the Court may direct, and that no such compromise shall be made by the liquidators appointed on the voluntary winding-up of a company, except with the sanction of a special resolution; to prove, claim, rank, and draw a dividend in the matter of the bankruptcy or insolvency or sequestration of any contributory for any balance against the estate of

such contributory, and to take and receive dividends in respect of such balance in the matter of insolvency or sequestration as a separate debt due from such insolvent, and rateably with the other separate creditors; to draw, accept, make, and indorse any bill of exchange or promissory note, and also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making, or indorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company, shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or indorsed by such company in the course of carrying on the business thereof; to do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Imp. § 151.

Appointment of clerks to assist official liquidators. 100. The official liquidators may, with the approval of the Court, appoint such clerks or officers as may be necessary to assist them in the performance of their duties. There shall be paid to such agent, clerks, and officers such remuneration, by way of fees or otherwise, as may be allowed by the Court.

Imp. § 161. This section applies to the appointment of proctors. If the appointment is not approved by the Court, the proctor acting on behalf of the company is not entitled to be paid any costs out of the assets of the company.—*In re Jaffna, etc., Co., Ltd.*, (1890), 1 C. L. R. 25.

Remuneration of official liquidator 101. There shall be paid to the official liquidators such salary or remuneration by way of percentage or otherwise as the Court directs.

Imp. § 149 (8).

Dissolution of company. 102. When the affairs of the company have been completely wound up, the Court shall make an order declaring the company to be dissolved from the date of such order, and the company shall be dissolved accordingly.

Imp. § 172 (1).

Registrar to make minute of dissolution of company. 103. Any order so made shall be reported by the official liquidators to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company.

Imp. § 172 (2).

Power of the Judges of the Supreme Court to make rules. 104. The Judges of the Supreme Court may, as often as circumstances require, make such rules concerning the mode of proceeding to be had for winding up a company, and the fees to be paid to advocates and proctors in respect thereof, as may from time to time seem necessary; but until such rules are made the general practice of the Court, including its practice in insolvency cases, shall, so far as the same is applicable to and not inconsistent with this Ordinance, apply to all proceedings for winding up a company, and official liquidators shall be considered as occupying in all respects the place of an assignee.

Imp. § 237.

Voluntary winding-up of the company.

Circumstances under which company may be wound up voluntarily. 105. A company may be wound up voluntarily: 1. Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the articles of association that the company is to be dissolved; 2. Whenever the company in general meeting has passed a special resolution requiring the company to be wound up voluntarily. Whenever a company is wound up voluntarily, the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof, but its corporate state and all its corporate powers shall, notwithstanding any provision to the contrary in its articles of association, continue until the affairs of the company are wound up.

Imp. § 182.

Notice of resolution to wind up voluntarily. 106. Notice of any special resolution to wind up a company voluntarily shall be given in the *Government Gazette*.

Imp. § 185.

Consequences of voluntary winding-up. 107. The following consequences shall ensue from the voluntary winding-up of a company: 1. The property of the company shall be applied in satisfaction of its liabilities, and subject thereto, and, unless it be otherwise provided by the articles of association, be distributed amongst the shareholders in proportion to their shares; 2. Liquidators may be appointed for the purpose of winding up the affairs of the company and distributing the property; 3. The com-

pany in general meeting may appoint such person or persons as it thinks fit to be a liquidator or liquidators, and may fix the remuneration to be paid to them; 4. If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him; 5. When several liquidators are appointed, every power hereby given may be exercised by any two of them; 6. The liquidators may, at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, or the debts in respect of which the several classes of contributories are liable, call on all or any of the contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts of the company and the costs of winding it up; and they may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same; 7. The liquidators shall have all powers hereinbefore vested in official liquidators, and may exercise the same without the intervention of the Court; 8. All books, papers, and documents in the hands of the liquidators shall, at all reasonable times, be open to the inspection of the shareholders; 9. When the creditors are satisfied the liquidators shall proceed to adjust the rights of the contributories amongst themselves; and for the purposes of such adjustment they may make calls on all contributories to the extent of their liability for any sums they may deem necessary, and they may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same; 10. As soon as the affairs of the company are fully wound up the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the company disposed of; and such account, with the vouchers thereof, shall be laid before such person or persons as may be appointed by the company to inspect the same; and upon such inspection being concluded the liquidators shall proceed to call a general meeting of the shareholders for the purpose of considering such account; but no such meeting shall be deemed to be duly held unless one month's previous notice, specifying the time, place, and object of such meeting, has been published in the *Government Gazette*; 11. Such general meeting shall not enter upon any business except the consideration of the account; but the meeting may proceed to the consideration thereof notwithstanding the quorum required by any regulation of the company to be present at general meetings is not present thereat, and if on consideration the meeting is of opinion that the affairs of the company have been fairly wound up they shall pass a resolution to that effect, and thereupon the liquidators shall publish a notice of such resolution in the *Government Gazette*, and shall also make a return to the Registrar of such resolution, and on the expiration of one month from the date of the registration of such return the company shall be deemed to be dissolved; 12. If within one year after the passing of the resolution for winding up the affairs of the company such affairs are not wound up, the liquidators shall immediately thereafter make up an account showing the state of the affairs, and the progress which has been made in winding up down to that date; and they shall add thereto a report stating the reason why the winding-up has not been completed, and a general meeting shall be called to consider the same, and so on from year to year until the winding-up of the affairs of the company is completed.

Imp. § 186.

Costs to be paid out of assets in priority to all other claims. 108. All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

Imp. § 196.

Saving of rights of creditors. 109. The voluntary winding-up of a company shall not prejudice the right of any creditor of such company to institute proceedings for the purpose of having the same wound up by the Court.

Imp. §§ 188, 197.

Appeals may be taken against decisions or orders of District and Police Courts. 110. All decisions and orders of the District and Police Courts made under the authority of this Ordinance shall be subject to an appeal to the Supreme Court; and every such appeal shall be brought on and prosecuted in such manner and shall be subject to such regulations as now exist, or shall be hereafter made by any rule or order of the Supreme Court.

*Schedule.**A. [Contains table of fees.]**B. Memorandum of Association of "The Company, Limited."*

1. The name of the company is "Company, Limited."
2. The registered office of the company is to be established in .
3. The objects for which the company is established are "to ."
4. The liability of the shareholders is limited.
5. The nominal capital of the company is £ , divided into shares of £ each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

| Names and addresses of subscribers. | | Number of shares taken by each subscriber. |
|-------------------------------------|-------|--|
| 1. A. B., of | | 20 |
| 2. B. C., of | | 25 |
| 3. C. D., of | | 10 |
| 4. D. E., of | | 15 |
| 5. E. F., of | | 10 |
| 6. F. G., of | | 10 |
| 7. G. H., of | | 10 |
| Total shares taken | | 100 |

Dated the day of .

Witness to the above signatures,

A. B., No. 13.

*C. Regulations for management of the company.**Shares.*

1. Every person taking any share in the company shall testify his acceptance thereof by writing under his hand, in such form as the company from time to time directs.

2. The company may from time to time make such calls upon the shareholders in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call by publication in the *Gazette*, and each shareholder shall be liable to pay the amount of calls so made to the persons and at the time and places appointed by the company.

3. A call shall be deemed to have been made at the time when the resolution authorizing such call was passed.

4. If before or on the day appointed for payment any shareholder does not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate of nine pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

5. The company may, if they think fit, receive from any of the shareholders willing to advance the same all or any part of the moneys due upon their respective shares beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the shareholders paying such sum in advance and the company agree upon.

6. If several persons are joint holders of any share, any one of such persons may give effectual receipt for any dividend payable in respect of such share.

7. The company may decline to register any transfer of shares made by a shareholder who is indebted to them.

8. Every shareholder shall on payment of one shilling be entitled to a certificate under the common seal of the company, specifying the share or shares held by him and the amount paid up thereon.

9. If such certificate is worn out or lost, it may be renewed on payment of one shilling.

10. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of shares.

11. The executors, or administrators, or heirs of a deceased shareholder shall be the only persons recognized by the company as having any title to his share.

12. Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any shareholder, or in consequence of the marriage of any female shareholder, or in any way other than by transfer, may be registered as a shareholder upon such evidence being produced as may from time to time be required by the company.

13. Any person who has become entitled to a share in any way other than by transfer may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share.

14. The person so becoming entitled shall testify such election by executing to his nominee a transfer of such share.

15. The instrument of transfer shall be presented to the company, accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the company shall register the transferee as a shareholder.

Forfeiture of shares.

16. If any shareholder fails to pay any call due on the appointed day, the company may, at any time thereafter during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with any interest that may have accrued by reason of such non-payment.

17. The notice shall name a further day, and a place or places, being a place or places at which calls of the company are usually made payable, on and at which such call is to be paid. It shall also state that in the event of non-payment at the time and place appointed the shares in respect of which such call was made will be liable to be forfeited.

18. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.

19. Any shares so forfeited shall be demand to be the property of the company, and may be disposed of in such manner as the company think fit.

20. Any shareholder whose shares have been forfeited shall, notwithstanding, be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

Increase of capital.

21. The company may, with the sanction of the company previously given in general meeting, increase its capital.

22. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General meeting.

23. The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the company, and at such place as the directors may determine.

24. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in each year, at such place as may be determined by the directors.

25. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

26. The directors may whenever they think fit, and they shall, upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the company, convene an extraordinary general meeting.

27. Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

28. Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting; if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

29. Seven days' notice at the least, specifying the place and the hour of meeting and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner, if any, as may be prescribed by the company.

30. Any shareholder may, on giving not less than three days' previous notice of any resolution, submit the same to a meeting.

31. Such notice shall be given by leaving a copy of the resolution at the registered office of the company.

32. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business, and such quorum shall be ascertained as follows, that is to say: if the shareholders belonging to the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every additional five shareholders up to fifty; and one for every ten additional shareholders after fifty, with this limitation, that no quorum shall in any case exceed forty.

33. If within one hour from the time appointed for the meeting the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved. In any other case it shall stand adjourned to the following day, at the same time and place; and if at such adjourned meeting the required number of shareholders is not present, it shall be adjourned *sine die*.

34. The chairman, if any, of the board of directors shall preside as chairman at every meeting of the company.

35. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose some one of their number to be chairman of such meeting.

36. The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

37. At any general meeting, unless a poll is demanded by at least five shareholders, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

38. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

Votes of shareholders.

39. Every shareholder shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.

40. If any shareholder is a lunatic or idiot or prodigal he may vote by his curator; and if any shareholder is a minor he may vote by his guardian, or any one of his guardians, if more than one.

41. If one or more persons are jointly entitled to a share or shares, the person whose name stands first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

42. No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three months, unless such shares have been acquired, or shall have come by bequest, or by marriage, or by succession to an intestate's estate, or by operation of law, or by any deed of settlement, after the death of any person who shall have been entitled for life to the dividends of such shares.

43. Votes may be given either personally or by proxies; a proxy shall be appointed in writing under the hand of the appointor or if such appointor is a corporation, under their common seal.

44. No person shall be appointed a proxy who is not a shareholder, and the instrument or mandate appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote; but no instrument or mandate appointing a proxy shall be valid after the expiration of one month from the date of its execution.

Directors.

45. The number of the directors and the names of the first directors shall be determined by the subscribers to the memorandum of association.

46. Until directors are appointed the subscribers to the memorandum of association shall for all purposes of this Ordinance be deemed to be directors.

Powers of directors.

47. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by this Ordinance or by the articles of association, if any, declared to be exercisable by the company in general meeting, subject, nevertheless, to any regulations of the articles of association, to the provisions of this Ordinance, and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Disqualification of directors.

48. The office of director shall be vacated: if he holds any other office or place of profit under the company; if he becomes insolvent; if he is concerned in or participates in the profits of any contract with the company; if he participates in the profits of any work done for the company. But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a shareholder in any incorporated company which was entered into contracts with or done any work for the company of which he is director; nevertheless, he shall not vote in respect of such work or contract; and if he does so vote his vote shall not be counted, and he shall incur a penalty not exceeding twenty pounds.

Rotation of directors.

49. At the first ordinary meeting after the incorporation of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

50. The directors who are to retire during the first and second years ensuing the incorporation of the company shall, unless the directors agree among themselves, be determined by ballot; in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

51. A retiring director shall be eligible for re-election.

52. The company, at the general meeting at which any directors retire in manner foresaid, shall fill up the vacated offices by electing a like number of persons.

53. If at any meeting at which an election of directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at the same time and place; and if at such adjourned meeting no election takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year.

54. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation they are to go out of office.

55. Any casual vacancy in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

Proceedings of directors.

56. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman, in addition to his original vote, shall have a casting vote. A director may at any time summon a meeting of the directors.

57. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

58. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit, who shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed by the directors.

59. A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

60. A committee may meet and adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall, in addition to his original vote, have a casting vote.

61. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

62. The directors shall cause minutes to be made in a book or books provided for and used solely for that purpose: (1) of all appointments of officers made by the directors; (2) of the names of the directors present at each meeting of directors and committees of directors; (3) of all orders made by the directors and committees of directors; and (4) of all resolutions and proceedings of meetings of the company and of the directors and committees of directors. And any such minute as aforesaid, if signed by any person purporting to be the chairman of any meeting of directors or committee of directors, shall be receivable in evidence without any further proof.

63. The company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had been removed.

Dividends.

64. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

65. No dividends shall be payable except out of the profits arising from the business of the company and with the sanction of the directors.

66. The directors may, before recommending any dividend set aside out of the profits of the company such sum as they think proper as a reserve fund to meet contingencies, or for equalizing dividends, or of repairing or maintaining the works connected with the business of the company, or any part thereof, and the directors may invest the sum so set apart as a reserve fund upon such securities as they, with the sanction of the company, may select.

67. The directors may deduct from the dividends payable to any shareholders all such sums of money as may be due from him to the company on account of calls or otherwise.

68. Notice of any dividend that may have been declared shall be given to each shareholder, or sent by post or otherwise to his registered place of abode; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

69. No dividend shall bear interest as against the company.

Accounts.

70. Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

71. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

72. A balance sheet shall be made out in every year, and laid before the general meeting of the company, and such balance sheet shall contain a summary of property and liabilities of the company, arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

73. A printed copy of such balance sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder.

Audit.

74. The accounts of the company shall be examined, and the correctness of the balance sheet ascertained, by one or more auditors to be elected by the company in general meeting.

75. If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

76. The auditors need not be shareholders of the company. No person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the company, and no director or other officer of the company is eligible during his continuance in office.

77. The election of auditors shall be made by the company at their ordinary meeting, or, if there are more than one, at their first ordinary meeting in each year.

78. The remuneration of the auditors shall be fixed by the company at the time of their election.

79. Any auditor shall be re-eligible on his quitting office.

80. If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

81. If no election of auditors is made in manner aforesaid, the Governor may, with the advice and consent of the Executive Council, and on the application of one-fifth in number of the shareholders of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

82. Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

83. Every auditor shall have a list delivered to him of all books kept by the company, and he shall at all reasonable times have access to the books and accounts of the company. He may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors, or any other officer of the company.

84. The auditors shall make a report to the shareholders upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet containing the particulars required by these regulations, and properly drawn up as to exhibit a true and correct view of the state of the company's affairs; and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

85. Notices requiring to be served by the company upon the shareholders may be served either personally or by leaving the same or sending them through the post in a letter addressed to the shareholders at their registered places of abode.

86. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders, and notice so given shall be sufficient notice to all the proprietors of such share.

87. All notices required by this Ordinance to be given by advertisement shall be published in the *Government Gazette*.

Form of balance sheet referred to in Table.

Dr. Balance sheet of the Company, made up to 18 . Cr.

| Capital and liabilities. | | Property and assets. | |
|--|--|----------------------|---------|
| Dr. | Cr. | £ s. d. | £ s. d. |
| I. Capital. | | | |
| 1 | Showing— The total amount received from the shareholders; showing also— a) The number of shares b) The amount paid per share c) If any arrears of calls, the nature of the arrears and the names of the defaulters. Any arrears due from any director or officer of the company to be separately stated. d) The particulars of any forfeited shares. | | |
| II. Debts and Liabilities of the Company. | | | |
| 2 | Showing— The amount of loans on mortgage or debenture bonds. | | |
| 3 | The amount of debts owing by the company, distinguishing— a) Debts for which acceptances have been given b) Debts to tradesmen for supplies of stock in trade and other articles c) Debts for law expenses d) Debts for interest on loans e) Unclaimed dividends f) Debts not enumerated above. | | |
| VI. Reserve Fund. | | | |
| | Showing— The amount set aside from profits to meet contingencies. | | |
| VII. Profit and Loss. | | | |
| | Showing— The disposable balance for payment of dividend, etc. Claims against the company not acknowledged as debts. Moneys for which the company is contingently liable. | | |
| Contingent Liabilities. | | | |
| | | | |
| III. Property held by the Company. | | | |
| 4 | Showing— Immoveable property, distinguishing— a) Land b) Buildings c) Leasehold Moveable property, distinguishing— d) Stock in trade e) Plant. The cost to be stated, with deductions for deterioration in value, as charged to the reserve fund or profit and loss. | | |
| 5 | | | |
| 6 | Showing— Debts considered good for which the company hold bills or other securities. | | |
| 7 | Debts considered good for which the Company hold no security. | | |
| 8 | Debts considered doubtful and bad. Any debt due from a director or other officer of the company to be separately stated. | | |
| V. Cash and Investments. | | | |
| | Showing— The nature of investment and rate of interest. The amount of cash, where lodged, and if bearing interest. | | |

E. Form of transfer of shares.

I, _____, of _____, (in consideration of the sum of £ _____ paid to me by _____, of _____), do hereby transfer to the said _____ share (or shares), numbered _____, in the _____ Company, Limited, standing in my name in the books of the company, to hold unto the said _____, his heirs, executors, administrators, and assigns, subject to the several conditions on which I hold the same; and I, the said _____, do hereby agree to take the said share (or shares), subject to the same conditions.

As witness our hands the _____ day of _____, 18 ____.

F. Form of mortgage.

The _____ Company, Limited (in consideration of the sum of _____ paid to such company by _____ of _____), mortgages unto him, his heirs, executors, administrators, and assigns, the following _____

Given under the seal of the said company this _____ day of _____, 18 ____.

b) No. 6 of 1888. An Ordinance to amend The Joint Stock Companies Ordinance, 1861 (11th December, 1888).

Short title. 1. This Ordinance may be cited for all purposes as *The Joint Stock Companies Ordinance, 1888*.

Ordinance to be construed as one with Ord. No. 4 of 1861. 2. *The Joint Stock Companies Ordinance, 1861*, is hereinafter referred to as the principal Ordinance, and the principal Ordinance and this Ordinance are hereinafter distinguished, and may be cited for all purposes as *The Joint Stock Companies Ordinances, 1861 and 1888*, and this Ordinance shall, so far as is consistent with the tenor thereof, be construed as one with the principal Ordinance; and the expression "this Ordinance" in the principal Ordinance, and any expression referring to the principal Ordinance which occurs in any Ordinance or other document, shall be construed to mean the principal Ordinance as amended by this Ordinance.

Commencement of Ordinance. 3. This Ordinance shall come into force on the first day of January, 1889, which date is hereinafter referred to as the commencement of this Ordinance.

Construction of capital and powers to reduce capital. 4. The word "capital" as used in this Ordinance shall include paid up capital, and the power to reduce capital conferred by this Ordinance shall include a power to cancel any lost capital or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid up capital may be reduced either with or without extinguishing or reducing the liability, if any, remaining on the shares of the company; and to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved.

Power to company to reduce capital. 5. Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the Registrar of Joint Stock Companies, as is hereinafter mentioned.

Company to add "and reduced" to its name for a limited period. 6. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company, within the meaning of the principal Ordinance.

Company to apply to the Court for an order confirming reduction. 7. A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction; and on the hearing of the petition the Court, if satisfied that, with respect to every creditor of the company who, under the provisions of this Ordinance, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged, or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Definition of the Court. 8. The expression "the Court" shall in this Ordinance mean the District Court which has jurisdiction to make an order for winding up the petitioning company, and the 68th section of the principal Ordinance shall be construed as if that section included proceedings under this Ordinance, and the Court may in any proceedings under this Ordinance make such order as to costs as it deems fit.

Creditors may object to reduction, and list of objecting creditors to be settled by the Court. 9. Where a company proposes to reduce its capital, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object. The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction.

Court may dispense with consent of creditor on security being given for his debt. 10. Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may, if it think fit, dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the Court may direct a sum of such amount as is hereinafter mentioned, that is to say: 1. If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated; 2. If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent, or not ascertained, then the Court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court; and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

Dispensing with consent of creditors and of adding the words "and reduced" in certain cases. 11. Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid up capital: 1. The creditors of the company shall not, unless the Court otherwise direct, be entitled to object, or required to consent to the reduction; and 2. It shall not be necessary, before the presentation of the petition for confirming the reduction, to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced." In any case that the Court thinks fit so to do, it may require the company to publish in such manner as it thinks fit the reasons for the reduction of its capital, or such other information in regard to the reduction of its capital as the Court may think expedient with a view to give proper information to the public in relation to the reduction of its capital by a company, and if the Court thinks fit, the causes which led to such reduction.

Order and minute to be registered. 12. The Registrar of Joint Stock Companies, upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing with respect to the capital of the company as altered by the order the amount of such capital, the number of shares in which it is to be divided, the amount of each share, and the amount, if any, proposed to be deemed to have been paid up on each share at the date of the registration, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect. Notice of such registration shall be published in such manner as the Court may direct. The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Ordinance with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

Minute to form part of memorandum of association. 13. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association, and, subject as in this Ordinance mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings. 14. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Ordinance is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable within the meaning of the 76th section of the principal Ordinance to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration, and on the company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Copy of registered minute. 15. A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration, and if any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding ten rupees for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Penalty on concealment of name of creditor. 16. If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of an offence, and shall be punishable by such punishment as the Court before which a conviction therefor shall be obtained shall award.

Power to make rules extended to making rules concerning matters in this Ordinance.

17. The powers of making rules concerning winding-up conferred on the Judges of the Supreme Court by the 104th section of the principal Ordinance shall respectively extend to making rules concerning matters in which jurisdiction is by this Ordinance given to the Court which has the power of making an order to wind up a company; and until such rules are made the practice of the Court in matters of the same nature shall, so far as the same is applicable, be followed.

Power to reduce capital by the cancellation of unissued shares. 18. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital by cancelling any shares which at the date of the passing of such resolution have not been taken, or agreed to be taken, by any person, and the provisions hereinbefore contained shall not apply to any reduction of capital made in pursuance of this section.

Provision for the reception in evidence of certified copies of certificates of incorporation and other documents. 19. And whereas it is expedient to make provision for the reception as legal evidence of certificates of incorporation other than the original certificates, and of certified copies of extracts from any documents filed and registered under *The Joint Stock Companies Ordinances, 1861 and 1888*: be it enacted that any certificate of the incorporation of any company given by the Registrar for the time being shall be received in evidence as if it were the original

certificate, and any copy of, or extract from, any of the documents or part of the documents kept and registered at the office for the registration of joint stock companies, if duly certified to be a true copy under the hand of the Registrar for the time being, and whom it shall not be necessary to prove to be the Registrar, shall in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document.

Secondary evidence may be given of the existence, condition, or contents of a document when the original is a document of which the certified copy is permitted by law to be given in evidence. — Ord. No. 14 of 1895, § 65 (6).

c) No. 3 of 1893. An Ordinance to amend The Joint Stock Companies Ordinances, 1861 and 1888 (21st November, 1893).

Short title. 1. This Ordinance may be cited for all purposes as *The Joint Stock Companies Ordinance, 1893*.

Ordinance to be construed as one with Ords No. 4 of 1861 and No. 6 of 1888. 2. *The Joint Stock Companies Ordinance, 1861* is hereafter referred to as the principal Ordinance, and the principal Ordinance, *The Joint Stock Companies Ordinance, 1888*, and this Ordinance shall be read as one Ordinance, and may be cited for all purposes as *The Joint Stock Companies Ordinances, 1861, 1888, and 1893*; and the expression "this Ordinance" in the principal Ordinance, and any expression referring to the principal Ordinance which occurs in any Ordinance or other document shall be construed to mean the principal Ordinance as amended by *The Joint Stock Companies Ordinance, 1888*, and this Ordinance.

Commencement of Ordinance. 3. This Ordinance shall come into force on the first day of January, 1894, which date is hereinafter referred to as the commencement of this Ordinance.

[4—10. Are embodied in the principal Ordinance.]

Wages and salaries to be a claim; such claims to rank equally; liquidators to discharge same upon receipt of sufficient assets. 11. 1. In the distribution of the assets of any company being wound up under the principal Ordinance, there shall be paid in priority to other debts: a) All wages or salary of any clerk or servant in respect of service rendered to the company during four months before the commencement of the winding-up, not exceeding five hundred rupees; and b) All wages of any labourers or workmen in respect of service rendered to the company during two months before the commencement of the winding-up. 2. The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions between themselves. 3. Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the liquidator or liquidators or official liquidator shall discharge the foregoing debts forthwith, so far as the assets of the company are and will be sufficient to meet them, as and when such assets come into the hands of such liquidator or liquidators or official liquidator.

Prospectus, etc., to specify dates and names of parties to any contract made prior to issue of such prospectus, etc.; penalty. 12. Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors, or the company, or otherwise, and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company who knowingly issued the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract. And any promoter, director, or officer of a company who shall issue any such prospectus or notice contrary to the provisions of this section shall be guilty of an offence, and be punished with imprisonment of either description for a term which may extend to twelve months, and with a fine not exceeding five thousand rupees.

Register of mortgages. 13. Every limited company under the principal Ordinance shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge

created, and the names of the mortgagees, or persons entitled to such charge; if any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding five hundred rupees. The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times, and if such inspection is refused any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues, and in addition to the above penalty any District Judge in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

Power of company to alter objects subject to confirmation by Court. 14. 1. Subject to the provisions hereinafter mentioned a company registered under the principal Ordinance may, by special resolution, alter the provisions of its memorandum of association with respect to the objects of the company, but in no case shall any such alteration take effect until confirmed on petition by the Court which has jurisdiction to make an order for winding up the company. 2. Before confirming any such alteration the Court must be satisfied: a) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any person or class of persons whose interest will, in the opinion of the Court, be affected by the alteration; and b) That with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged, or has determined, or has been secured to the satisfaction of the Court. Provided that the Court may, in the case of any person or class of persons, for special reasons dispense with the notice required by this section. 3. An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper. 4. The Court shall, in exercising its discretion under this Ordinance, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that any arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always that it shall not be lawful to expend any part of the capital of the company in any such purchase. 5. The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company: a) To carry on its business more economically or more efficiently; or b) To attain its main purpose by new or improved means; or c) To enlarge or change the local area of its operations; or d) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or e) To restrict or abandon any of the objects specified in the memorandum of association.

Registration of order together with memorandum as altered, and consequences thereof. 15. 1. Where a company has altered the provisions of its memorandum of association with respect to the objects of the company, and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association, shall be delivered by the company to the Registrar of Joint Stock Companies within fifteen days from the date of the order, and the Registrar shall register the same and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Ordinance, with respect to such alteration and the confirmation thereof, have been complied with, and thenceforth (but subject to the provisions of this Ordinance) the memorandum so altered shall be the memorandum of association, and shall apply to the company in the same manner as if the company were a company registered under the principal Ordinance with such memorandum. 2. If a company makes default in delivering to the Registrar any document required by this section to be delivered to him, the company shall be liable to a penalty not exceeding one hundred rupees for every day during which it is in default.

Penalties to be recoverable at the suit of the Registrar in the Court of Requests, Colombo. 16. All penalties imposed by and recoverable under this or the principal Ordinance shall be deemed and taken to be a debt to Her Majesty of the party, parties, or company liable to pay the same, and shall and may, whatever may be the amount claimed, be sued for and recovered by the Registrar on behalf of Her Majesty in the Court of Requests, Colombo.

d) No. 17 of 1907. An Ordinance to amend The Joint Stock Companies Ordinance, 1861 (9th October, 1907).

Short title. 1. This Ordinance may be cited for all purposes as *The Joint Stock Companies (Amendment) Ordinance, 1907*.

Construction. 2. The principal Ordinance, *The Joint Stock Companies Ordinance, 1888*, *The Joint Stock Companies Ordinance, 1893*, and this Ordinance shall be read and construed as one Ordinance, and may be cited for all purposes as *The Joint Stock Companies Ordinances, 1861 to 1907*.

Commencement. 3. This Ordinance shall come into force on the date of its proclamation in the *Gazette*.

[4. Adds to Ord. No. 4 of 1861 a new section, § 35 A.]

[5. Adds to Ord. No. 4 of 1861 a new section, § 13 A.]

[6. Amends Ord. No. 4 of 1861, § 14, and is there incorporated.]

e) No. 18 of 1909. An Ordinance to amend The Joint Stock Companies Ordinance, 1861 (3d December, 1909).

Short title. 1. This Ordinance may be cited as *The Joint Stock Companies (Amendment) Ordinance, 1909*, and the principal Ordinance and this Ordinance shall be read and construed as one Ordinance, and may be cited collectively as *The Joint Stock Companies Ordinances, 1861 to 1909*.

[2. Amends Ord. No. 4 of 1861, § 20, and is there incorporated.]

[3. Amends Ord. No. 4 of 1861, § 41, and is there incorporated.]

Sale of Goods.

No. 11 of 1896. An Ordinance for amending and codifying the Law relating to the Sale of Goods (1st December, 1896).¹⁾

Part I. Formation of the Contract.

Contract of sale.

1. = Imp. § 1.

2. = Imp. § 2, except: "an infant or" and "infant or" are omitted.

Formalities of the contract.

3. = Imp. § 3, except: "Ordinance in that behalf" is substituted for "statute in that behalf;" "either with or without seal" is omitted.

Imp. § 3. An agreement in the following terms: "I agree to sell to the plumbago, now at their mills at the following prices, viz., lumps at rs. 145 per ton, chips at rs. 75, and dust at rs. 50," signed by the owner of the goods, is a contract of sale, and not merely an offer to sell. — *Sandoris Silva v. Volkart Brothers*, (1893), 2 C. L. R. 197.

4. = Imp. § 4 (1-3), except: "of the value of £10 or upwards" is omitted.

Imp. § 4. Note that the requirement that contracts for the sale of goods shall be in writing extends to all contracts, and is not limited to those where the amount exceeds a specified amount.

Subject-matter of contract.

5. = Imp. § 5.

Imp. § 5. The right to sell arrack within a certain district is not "goods" within the meaning of this section. The word "moveable" includes only corporeal moveables. — *Croos v. De Soyaa*,

¹⁾ The references (Imp.) are to the *Imperial Sale of Goods Act, 1893*, (56 & 57 Vic. c. 71). Throughout "Ordinance" is substituted for "Act."

(1903), 7 N. L. R. 32. An instrument relating to future goods is not a bill of sale within Ord. No. 8 of 1871. — *Darley, Butler & Co. v. Silva*, (1908), 11 N. L. R. 316.

6—7. = Imp. §§ 6—7.

The price.

8—9. = Imp. §§ 8—9.

Conditions and warranties.

10. = Imp. § 10.

11. = Imp. § 11 (1), except: "in England or Ireland" is omitted.

12. = Imp. § 12.

Imp. § 12. Under the Roman Dutch Law the seller warrants that the buyer shall have the absolute and dominant enjoyment of the goods. But in order to entitle the buyer to recover on this warranty he must show that he was evicted from the goods by the judgment of a competent court. And such judgment is not binding on the seller unless he is called upon to warrant and defend the buyer's title. — *Abdul Ally v. Caderavallee*, (1893), 2 C. L. R. 165.

13. = Imp. § 13.

Imp. § 13. Where goods of a particular description are sold the buyer can not refuse to accept delivery on the ground that he intended to purchase goods of a different description. — *Simson v. Vanderspar*, (1885), 7 S. C. C. 88.

14. = Imp. § 14, except: "Ordinance in that behalf" is substituted for "statute in that behalf."

Imp. § 14. The rule of caveat emptor does not apply where the buyer had no reasonable opportunity to inspect the goods, nor *semble*, where goods of an entirely different kind, and not merely of an inferior quality, are delivered. — *Delmege, Reid & Co. v. Murray, Robertson & Co.*, (1880), 3 S. C. C. 119.

Sale by sample.

15. = Imp. § 15.

Part II. Effects of the Contract.

Transfer of property as between seller and buyer.

16. = Imp. § 16.

17. = Imp. § 17.

Imp. § 17. A contract to sell the whole of a particular business at a price to be fixed by appraisers is a sale of specific goods. A generic thing may be a specific thing if nothing more remains to be done except to collect the parts for the purpose of easy delivery. — *Le Mesurier v. Kotalawala*, (1899), Koch, 29.

18. = Imp. § 18, except: in Rule 5 (2) "or custodier" is omitted.

19. = Imp. § 19, except: in (1) "or custodier" is omitted.

20. = Imp. § 20, except: "or custodier" is omitted.

21. = Imp. § 21 (1, 2), except: (2) reads as follows: "Provided also that nothing in this Ordinance shall affect: a) The provisions of *The Factors Act*, or any Imperial enactment in force in the Island, or any local Ordinance, enabling the apparent owner of goods to dispose of them as if he were the true owner thereof. b) The validity of any contract of sale under any statutory power of sale or under the order of a court of competent jurisdiction."

22. = Imp. § 23.

23. = Imp. § 24 (1, 2), except: in 1. "whether by sale in market overt or otherwise" is omitted; in 2. "theft" is substituted for "larceny."

Imp. § 24. The doctrine of market overt does not apply. — *Northmore v. Mayapulle*, (1864). Ram. 1863, 95.

24. = Imp. § 25, except: 3. reads as follows: "In this section the term mercantile agent shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods."

Imp. § 25. This section does not apply where the contract provides for the hire of an object at a certain monthly rental, with the provision that when a certain sum is paid the title in the object shall pass to the hirer. — *Cave & Co. v. Clay*, (1899), 4 N. L. R. 30.

Effect of writs of execution. 25. A writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the fiscal to be executed; and, for the better manifestation of such time, it shall be the duty of the fiscal, without fee, upon the receipt of any such writ, to endorse upon the back thereof the hour, day, month, and year when he received the same. Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ, by virtue

of which the goods of the execution debtor might be seized or attached, had been delivered to and remained unexecuted in the hands of the fiscal.

Imp. § 26.

Part III. Performance of the Contract.

26—29. = Imp. §§ 27—30.

30. = Imp. § 31.

Imp. § 31. Where there is a misdescription of the object of the sale, the price paid may be recovered back. — *Buchanan v. Forbes*, (1890), 9 S. C. C. 89.

31. = Imp. § 32.

Imp. § 32. In the absence of special agreement the seller is entitled to payment only upon completion of his contract. He can not demand payment for each instalment. — *Pieris v. Vanderspaar*, (1905), 1 Leemb. 41. See also *Volkart Bros. v. Velleyappa Chetty*, (1878), 3 S. C. C. 75.

32—36. = Imp. §§ 33—37.

Part IV. Rights of unpaid Seller against the Goods.

37. = Imp. § 38.

38. = Imp. § 39, except: in 1. "Ordinance in that behalf" is substituted for "statute in that behalf."

Unpaid seller's lien.

39—40. = Imp. §§ 41—42.

41. = Imp. § 43, except: in (1) (a) "or custodier" is omitted.

Stoppage in transitu.

42. = Imp. § 44.

43. = Imp. § 45, except: throughout "or custodier" is omitted.

44. = Imp. § 46, except: in (1) "or custodier" is omitted.

Re-sale by buyer or seller.

45—46. = Imp. §§ 47—48.

Part V. Actions for Breach of the Contract.

Remedies of the seller.

47. = Imp. § 49 (1, 2).

48. = Imp. § 50.

Remedies of the buyer.

49. = Imp. § 51.

50. = Imp. § 52, except: the sentence beginning with "the provision of this section" is omitted.

Imp. § 52. The measure of damages is the difference between the contract price and the market price at the place and time of tender. — *Volkart Bros. v. Velleyappa Chetty*, (1878), 3 S. C. C. 75.

51. = Imp. § 53 (1—4.)

Imp. § 53. As to implied warranty of merchandise marks, see *Ord. No. 13 of 1888*, §§ 16, 17. As to warranty of quality under the Roman Dutch law, see *Meera Lebbo v. Langenberg*, (1865), *Ram*. 1863, 136; *Creasy*, 69. A statement that a horse "has never been tried in harness, but is a good saddle horse," is not a warranty that the horse will go in harness, but if wilfully false may amount to a misrepresentation entitling the buyer to rescind the contract. — *Daniel v. Wright*, (1885), 7 S. C. C. 60. In order to entitle the buyer to rescind, the misrepresentation must be wilful and must be in regard to some condition material to the purpose for which the object was purchased. Ordinarily there is only a right to recover damages for breach of warranty. — *Daniel v. Wright*, (1886), 7 S. C. C. 188.

52. = Imp. § 54.

Part VI. Supplementary.

53—56. = Imp. §§ 55—58.

Repeal. 57. Subsection (3) of section 21 of the Ordinance No. 7 of 1840 is hereby repealed: Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Ordinance, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

Imp. § 60.

Savings. 58. 1. The rules in insolvency relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Ordinance contained. 2. The rules

of the English law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Ordinance, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress, or coercion, mistake, or other invalidating cause, shall apply to contracts for the sale of goods. 3. The provisions of this Ordinance relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security. 4. Nothing in this Ordinance shall prejudice or affect the landlord's right of hypothec or lien for rent.

Imp. § 61.

Interpretation of terms. 59. In this Ordinance, unless the contract or subject-matter otherwise requires: 1. "Action" includes claim in reconvention. "Buyer" means a person who buys or agrees to buy goods. "Contract of sale" includes an agreement to sell as well as a sale. "Delivery" means voluntary transfer of possession from one person to another. "Document of title to goods" includes any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented. "Factors Act" means the Act of the Imperial Parliament, 52 & 53 Vic. cap. 45. "Fault" means wrongful act or default. "Future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale. "Goods" include all moveables except moneys. The term includes growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. "Lien" includes the right of detention. "Plaintiff" includes the defendant claiming in reconvention. "Property" means the general property in goods and not merely a special property. "Quality of goods" includes their state or condition. "Sale" includes a bargain and sale as well as a sale and delivery. "Seller" means a person who sells or agrees to sell goods. "Specific goods" mean goods identified and agreed upon at the time a contract of sale is made. "Warranty" means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated. 2. A thing is deemed to be done "in good faith" within the meaning of this Ordinance when it is in fact done honestly, whether it be done negligently or not. 3. A person is deemed to be insolvent within the meaning of this Ordinance, who either has ceased to pay his debts in the ordinary course of business, or can not pay his debts as they become due, whether he has committed an act of insolvency or not, and whether he has become an insolvent or not. 4. Goods are in a "deliverable state" within the meaning of this Ordinance when they are in such a state that the buyer would under the contract be bound to take delivery of them.

Imp. § 62.

Commencement. 60. This Ordinance shall come into operation on the first day of January, 1897.

Imp. § 63.

Short title. 61. This Ordinance may be cited as *The Sale of Goods Ordinance, 1896*.

Imp. § 64.

Warehouse Warrants.

a) No. 1 of 1871. An Ordinance to amend the Customs Ordinance No. 17 of 1869, and to provide for the Issue of Warehouse Warrants (11th January, 1871).

Collector may issue warrants. 1. The Collector of Customs may, upon an application in writing by the owner, importer, or consignee of any goods duly warehoused in any Queen's warehouse, or other place of deposit provided by Government, issue to such owner, importer, or consignee, warrants under his hand substantiated in the form to this Ordinance annexed.

Goods transferable by endorsement and deliverable to the holders of warrants.

2. Such warrants shall be transferable once or oftener by the endorsement of the owner, importer, or consignee of the goods or of the holders of the said warrants, and the right and title to the goods enumerated in such warrants shall vest in the possessors thereof without any endorsement save that of the original grantee. The Collector shall, upon production and surrender of such warrants, but not otherwise, deliver the goods to the holders of the warrants, on due entry of the goods for home consumption or exportation, and upon payment of all duties and charges due on the said goods.

Warrants by private warehouse keepers. 3. It shall be lawful for the keeper of any bonded warehouse to issue to the owner, importer, or consignee of any goods duly warehoused in his bonded warehouse, warrants substantially in the form to this Ordinance annexed. Such warrants shall be transferable, once or oftener, by the indorsement of the owner, importer, or consignee of the goods, or of the holders of the said warrants; and the right and title to the goods enumerated in such warrants shall vest in the possessors thereof without any endorsement save that of the original grantee. The keeper of such warehouse shall, upon production and surrender of such warrants, but not otherwise, deliver the goods to the holders of the warrants on due entry of the goods for home consumption or exportation, and upon payment of all duties and charges due on the said goods. Provided that it shall not be lawful for the keeper of any bonded warehouse to issue warrants for goods in which he has any share or interest as owner, importer, or consignee.

[4. Is repealed by Ord. No. 1 of 1875, § 3.]

Crown when liable to make compensation for loss in any Queen's warehouse; Crown not liable for loss in any bonded warehouse. 5. Provided that the holder of any warrant issued by the Collector of Customs shall have no claim on the Crown to compensation for loss of any goods by fire, theft, damage, or other cause, except such loss be caused by the wilful embezzlement, waste, spoil, or destruction on the part of any officer of customs, and such officer shall have been prosecuted to conviction within one year from the date of such wilful embezzlement, waste, spoil, or destruction. The holder of a warrant issued by a bonded warehouse keeper shall have no claim on the Crown to compensation on any ground or pretext whatsoever.

Goods otherwise liable to customs laws and regulations. 6. Provided, further, that the Collector of Customs shall be in no way answerable for the correctness of the particulars of the contents or value of the goods specified in any warrant issued as aforesaid, and that the said goods shall be in every respect liable to the provisions of the laws and regulations relating to the customs in force at the time such goods shall be in deposit at the Queen's warehouse or other place of deposit provided by Government.

Penalties. 7. Any keeper of a bonded warehouse who shall fraudulently issue a warrant for goods not in his warehouse, or who shall fraudulently issue two or more warrants for the same goods, or who shall fraudulently issue warrants for goods in which he has any share or interest as owner, importer, or consignee, or who shall aid and assist any other person to do so, and any keeper of such warehouse or other person who shall in any way use any warrant granted under the provisions of this Ordinance for the purposes of defrauding or injuring any person, company, or corporation, shall be guilty of an offence, and be liable to imprisonment with or without hard labour not exceeding three years, and in addition thereto, at the discretion of the Judge, to a fine not exceeding one hundred pounds.

Governor to make regulations for certain purposes. 8. It shall be lawful for the Governor, with the advice of the Executive Council, from time to time to make regulations as to him shall appear expedient for any of the following purposes: 1. For preventing accidents by fire, and as to the lighting or using of candles, fires, and lamps, and as to the smoking of tobacco or herbs within the customs premises; 2. For governing and regulating porters, coolies, cartmen, and others carrying goods or using or driving horses, mules, bullocks, trucks, carts, sledges, or other carriages within the customs premises; 3. For preventing damage being done to any goods. And such regulations shall be published in the *Government Gazette*, and shall have the force of law. Any person who shall disobey the same shall be guilty of an offence, and be liable to a fine not exceeding five pounds.

as therein mentioned, of the warrant in which such goods are enumerated, and any person who shall re-issue any warrant surrendered as aforesaid, shall be deemed guilty of an offence, and liable on conviction to a fine not exceeding fifty rupees.

Stamp duty on warrants altered to five cents. 3. The 4th section of the Ordinance No. 1 of 1871 is hereby repealed, and in lieu thereof it is hereby enacted as follows: Every warrant, whether issued by a Collector of Customs or by the keeper of a bonded warehouse, shall bear a stamp duty of five cents, and such duty shall be denoted by adhesive stamps to be provided by the Commissioner of Stamps for that purpose, and to be affixed to such warrants. And such warrants shall be liable, in all matters relating to stamp duty, to the provisions of the Ordinances relating to stamp duties, so far as the same shall be applicable thereto.

Power to make regulations as to form of warrants and manner of defacing. 4. The power of making regulations created by the 8th section of the Ordinance No. 1 of 1871 shall be deemed to extend to the making from time to time of regulations prescribing new forms for the warrants mentioned in this Ordinance and the Ordinance No. 1 of 1871, and the manner in which such warrants are to be defaced as hereinbefore mentioned.

This Ordinance and the Ordinances No. 17 of 1869 and No. 1 of 1871 to be deemed one. 5. This Ordinance and the Ordinances No. 17 of 1869 and No. 1 of 1871 shall be read and construed as if they formed one Ordinance.

Commencement of Ordinance. 6. This Ordinance shall come into operation on such day as shall be appointed by the Governor by Proclamation in the *Government Gazette*.

Importation of Sugar.

a) No. 15 of 1903. An Ordinance to make Provision for giving Effect in Ceylon to a Convention signed the fifth day of March, One thousand nine hundred and two, in relation to Sugar (21st December, 1903).

Short title. 1. This Ordinance may be cited as *The Sugar Convention Ordinance, 1903*.

[2. Is repealed.]

Regulation as to certificate of origin of exported sugars. 3. 1. [As amended by Ord. No. 28 of 1908.] The Governor in Executive Council may by Proclamation make such regulations as appear to him necessary for the issue of certificates proving the origin of sugar exported from Ceylon. 2. Regulations made under this section shall apply to sugars which have been previously imported into the Island and are exported either in the form in which they were imported, or after refinement or other like process, as well as to sugars manufactured from produce grown in the Island.

Regulation of sugar factories. 4. The Governor, with the advice of the Executive Council, may by Proclamation declare that every sugar factory and sugar refinery and factory for the extraction of sugar from molasses or other substances in Ceylon shall be subject to the supervision of the Government Agent of the Province within which such factory or refinery is situated, and such Government Agent may, subject to the approval of the Governor in Executive Council, make regulations: a) For prohibiting the carrying on of any such factory or refinery, otherwise than by persons authorized, and in premises approved by the Government Agent and if required entered for the purpose; and for giving officers appointed by the Government Agent powers of entry into any part of the premises at any time; and b) For regulating the removal of any sugar to or from the premises, the storage of finished sugar, and the return of sugar for the purpose of further refinement; and c) For making such entries in relation to the various processes in the manufacture of sugar as may be required by the Government Agent, and for enabling the officers of the Government Agent to inspect those entries; d) For attaching penalties not exceeding five hundred rupees to any breach of or failure to comply with any regulation made under this section, and providing for the recovery and application of the penalty and for the forfeiture of any article in respect of which any offence against the regulations is committed.

Powers of Governor to revoke Proclamation. 5. 1. The Governor in Council may, by Proclamation, revoke, alter, or add to any Proclamation made under this Ordinance. 2. Nothing in this Ordinance shall apply to glucose.

b) No. 29 of 1908. An Ordinance to repeal so much of the Sugar Convention Ordinance, 1903, as enables the Importation into Ceylon of Sugar from certain foreign Countries to be prohibited or admitted subject to a special Duty (10th December, 1908).

Short title. 1. This Ordinance may be cited as *The Sugar Conventions (Amendment) Ordinance, 1908*.

Repeal of section 2, of the principal Ordinance. 2. Section 2 of the principal Ordinance is hereby repealed, and the said Ordinance shall, with regard to the numbering of the sections thereof, be read and construed as if section 2 had not been included in the said Ordinance.

[3. Amends Ord. No. 15 of 1903, § 3, and is there incorporated.]

Public and Bank Holidays.

No. 4 of 1886. An Ordinance to provide for Public and Bank Holidays (2d February, 1886).¹⁾

Short title; commencement. 1. This Ordinance may be cited as *The Holidays Ordinance, 1886*, and it shall come into operation on the passing thereof.

Imp. § 7.

Repeal. 2. From and after the coming into operation of this Ordinance there shall be repealed: 1. Section 8 of Ordinance 17 of 1869, intituled "An Ordinance for the General Regulation of Customs in the Island of Ceylon;" 2. So much of any other Ordinance as is inconsistent with this Ordinance.

Interpretation clause. 3. For the purposes of this Ordinance, the "day next following a public holiday" shall mean the next following day not being itself a public holiday; and "the day next following a bank holiday" shall mean the next following day not being itself a public or a bank holiday.

Certain days to be public holidays. 4. The several days mentioned in Schedule A hereto annexed (and which days are hereinafter referred to as public holidays) shall, in addition to Sundays, be dies non, and shall be kept (except as hereinafter provided) as holidays in this Colony. If any of these holidays fall on a Sunday, the following Monday shall be a public holiday, unless otherwise ordered by the Governor, of which notice shall be given in the *Government Gazette*.

Imp. § 1.

Regulations. 5. The Governor in Executive Council may, from time to time, make regulations excluding in whole, or in part, from the operation of this Ordinance, any public office or any department thereof, and thereupon all acts and things relating to such public office or department thereof may be done and performed on any public holiday, notwithstanding the provisions of this Ordinance.

Bank holidays; bill due on bank or public holidays to be payable on the following day. 6. After the coming into operation of this Ordinance, the several days in the Schedule B hereto annexed (and which days are hereinafter referred to as bank holidays) shall be kept as close holidays in all banks in this Colony, and all bills of exchange and promissory notes which are due and payable on any such bank or public holiday shall be payable, and in case of non-payment may be noted and protested, on the next following day; and any such noting or protest shall be as valid as if made on the day on which the bill or note was made due and payable.

Imp. § 1.

Provisions as to notice of dishonour and presentation for honour. 7. When the day on which any notice of dishonour of an unpaid bill of exchange or promissory note should be given, or when the day on which a bill of exchange or pro-

¹⁾ The references (Imp.) in the notes are to the *Imperial Bank Holidays Act, 1871*, (34 Vic. c 71).

missory note should be presented or received for acceptance, or accepted or forwarded to any referee or referees, is a bank or public holiday, such notice of dishonour shall be given and such bill of exchange or promissory note shall be presented or forwarded on the day next following such bank or public holiday.

Imp. § 2.

As to payments on bank or public holidays. 8. No person shall be compellable to make any payment or to do any act upon such bank or public holiday which he would not be compellable to do or make on Sunday, and the obligation to make such payment and to do such act shall apply to the day following such bank or public holiday; and the making of such payment and doing such act on such following day shall be equivalent to payment of the money or performance of the act on the holiday.

Imp. § 3.

Governor may appoint special days to be observed as bank or public holidays. 9. It shall be lawful for the Governor, by notification in the *Government Gazette*, at any time to appoint a special day to be observed as a public holiday or as a bank holiday, in addition to or in substitution for any of the days mentioned in the Schedules hereto annexed, and thereupon the provisions of this Ordinance shall be applicable to such day in the same manner as if the said day had been mentioned in the said Schedules.

Imp. § 4.

Schedule A.

Public Holidays.

New Year's Day and the following day.
 Ash Wednesday.
 Good Friday and the following day.
 Easter Monday and Tuesday.
 The Birthday of Her Majesty the Queen.
 Ascension Day.
 Accession Day of Her Majesty the Queen.
 The Prince of Wales' Birthday.
 Christmas Eve, Christmas Day, and two subsequent days.
 Hindu New Year's Festival.
 The first full moon of the Sinhalese month Wesak.
 The Mohammedan Hadji Festival.

Schedule B.

Bank Holidays.

New Year's Day and the following day.
 The Tamil Thai Pongal Day.
 Good Friday and the following day.
 Easter Monday and Tuesday.
 The Birthday of Her Majesty the Queen.
 Christmas Eve, Christmas Day, and two subsequent days.

Bankruptcy.

a) No. 7 of 1853. For regulating the due Collection, Administration, and Distribution of Insolvent Estates (23d November, 1853).¹⁾

Repeal of Ord. No. 6 of 1835. 1. The Ordinance No. 6 of 1835, entitled "Ordinance to amend and consolidate the laws now in force in the Settlements relating to bankruptcy, the relief of insolvent debtors, and the privilege of *cessio bonorum*," is repealed.

Commencement of the Ordinance; proviso. 2. This Ordinance shall commence and take effect from and after the first day of July next. Provided that nothing in this Ordinance contained shall render invalid any proceedings which may have been taken or commenced under the said Ordinance No. 6 of 1835, or lessen or affect any right, title, claim, demand, or remedy which any person now has or

¹⁾ The references (Imp.) in the notes are to the Imperial Bankruptcy Act, 1853, (46 & 47 Vic. § 52), unless otherwise indicated.

hereafter may have upon or against any bankrupt, against whom any commission of bankruptcy shall have been issued, or against any person who may or shall have taken proceedings for a composition with his creditors, or against any insolvent prisoner; and all proceedings commenced under the said Ordinance shall and may be continued and prosecuted as if this Ordinance had not been passed.

Cessio bonorum abolished; proviso. 3. It shall not be lawful for any person to obtain from any court within this Colony, or for any such court to grant to any person the benefit or relief of cession of goods and property commonly called the *cessio bonorum*, as hereinbefore known to and allowed by the Roman-Dutch law in force within this Colony: Provided that nothing herein contained shall be deemed or taken to affect in any way the estate or condition of any person to whom before the commencement of this Ordinance the said benefit or relief shall have been duly granted, which estate shall be administered, and which condition shall be judged of, as if this Ordinance had not been enacted.

Judges may make rules; proviso. 4. The Judges of the Supreme Court may from time to time make such rules and orders as they may think fit for the better carrying of this Ordinance into effect, and generally for regulating the practice of the District Court and the forms of proceedings under this Ordinance in all insolvency matters not provided for in this Ordinance: Provided that such rules and orders shall not be inconsistent with or repugnant to the provisions of this Ordinance, and that no such rules or orders shall be of any force or effect until they shall have been transmitted to the Governor and confirmed in the manner provided by the Ordinance No. 8 of 1846, entitled "For rendering the operation of rules of court contingent on their enactment by the Legislature."

Imp. § 127.

District Courts to be auxiliary to each other for proof of debts and taking examinations; proviso. 5. The several District Courts throughout this Colony shall be courts for the administration of insolvent estates under this Ordinance, and shall be auxiliary to each other for proof of debts and for the examination of persons or witnesses in all matters under this Ordinance, or for any or either of such purposes: Provided that all such examinations shall be taken down in writing, and shall be transmitted to the court in which the petition for sequestration is being prosecuted, and shall be annexed to and form part of the proceedings in the matter to which the same shall relate, and that no such examination shall be taken without the request in writing of the Judge of the District Court before whom the matter is being prosecuted.

Imp. §§ 117—119.

Appeals to Supreme Court. 6. All decisions and orders of the District Courts made under the authority of this Ordinance shall be subject to an appeal to the Supreme Court; and every such appeal shall be brought on and prosecuted in such manner and shall be subject to such regulations as now exist or shall be hereafter made by any rule or order of the Supreme Court. And with respect to acts of insolvency in general:

Imp. § 104. The provisions of the Civil Procedure Code, 1889, § 786, relating to the giving of security for the respondent's costs of appeal, do not apply to appeals from orders in insolvency cases. — In *re Marikar Abdul Azis*, (1895), 1 N. L. R. 196; overruling In *re Phillippo*, (1890), 9 S. C. C. 120. An insolvent who has failed to obtain a certificate has no right of appeal to the Privy Council. — In *re De Vos*, (1889), 2 Br. 331. See also In *re Andris*, (1900), 2 Br. 31; 4 N. L. R. 372.

Acts of insolvency. 7. If any person residing in this Colony, or having any property, real or personal, therein, shall depart therefrom, or being out of this Colony shall remain abroad, or shall depart from his dwelling house, or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested or taken in execution for any debt not due, or yield himself to prison, or procure himself to be arrested or taken in execution, or his goods, money, lands, or other property to be attached, sequestered, or taken in execution, or make or cause to be made, either in this Colony or elsewhere, any fraudulent grant, conveyance, or mortgage of any of his lands or goods, or make or cause to be made any fraudulent gift, delivery, or transfer of any of his goods or other property, every such person doing, suffering, procuring, executing, permitting, making, or causing to be made any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his creditors, shall be deemed to have thereby committed an act of insolvency.

Imp. § 4.

Conveyance of all a person's property to trustees not an act of insolvency, unless petition for sequestration filed within three months. 8. If any person shall execute any conveyance or assignment by deed of all his property to a trustee or trustees for the benefit of all the creditors of such person, the execution of such deed shall not be deemed an act of insolvency, unless a petition for sequestration of the estate of such person be filed within three months from the execution thereof: Provided such deed shall be executed by every such trustee within fifteen days after the execution thereof by such first mentioned person, and notice thereof be given within one month after the execution thereof by such first mentioned person in the *Government Gazette* and in some newspaper published in Colombo; and such notice shall contain the date and execution of such deed and the name and place of abode of every such trustee.

Lying in prison twenty-one days, and escaping out of prison, acts of insolvency. 9. If any person having been arrested or committed to prison for debt or on any attachment for non-payment of money shall, upon such or any other arrest or commitment for debt or non-payment of money, or upon any detention for debt, lie in prison for twenty-one days, or having been arrested or committed to prison for any other cause shall lie in prison for twenty-one days after any writ of execution issued against him and not discharged, every such person shall thereby be deemed to have committed an act of insolvency; or if any such person having been arrested, committed, or detained for debt shall escape out of prison or custody, every such person shall be deemed to have thereby committed an act of insolvency for the time of such arrest, commitment, or detention.

Suffering an imprisonment of twenty-one days on mesne process for failure to give security to abide by the judgment of the Court in a particular suit is not an act of insolvency within the meaning of this section. — In *re Pitche Muttu*, (1890), 1 S. C. R. 87; 1 C. L. R. 20. An arrest under a warrant stating the amount incorrectly is illegal, and a District Judge has no power to amend the warrant. — In *re Nadoris Tillekeratne*, (1866), 1 Tamb. 30; (1899), Koeh, 67.

Filing declaration of insolvency an act of insolvency. 10. If any person residing in this Colony shall file in the District Court of the district in which he shall have resided or carried on business for six months next immediately preceding a declaration in writing in the form A in the Schedule to this Ordinance annexed, signed by such person and attested by a proctor of such Court, or some other witness, that he is unable to meet his engagements, every such person shall be deemed thereby to have committed an act of insolvency at the time of filing such declaration, provided a petition for sequestration of his estate shall be filed by or against such person within two months from the filing of such declaration.

Imp. § 4 (f).

Compounding with petitioning creditor an act of insolvency. 11. If any person, after the filing of any petition for sequestration of his estate, shall pay money to the petitioning creditor, or give or deliver to such petitioning creditor, any satisfaction or security for his debt or any part thereof, whereby such petitioning creditor may receive more in the pound in respect of his debt than the other creditors, such payment, gift, delivery, satisfaction, or security shall be an act of insolvency; and if adjudication that such estate be sequestered shall have been made upon such petition, the Court may either declare such adjudication to be valid, and direct the same to be proceeded in, or may order it to be annulled; and a petition or new petition for sequestration may be filed, and such petition or new petition may be supported either by proof of such last mentioned or any other act of insolvency.

Imp. § 4 (a).

Defendant not paying, securing, or compounding for a judgment debt within thirty days after notice of an act of insolvency. 12. If any plaintiff shall recover judgment in any action for the recovery of any debt or money demand in any Court in this Colony against any person residing within the same, and shall be in a situation to sue out execution upon such judgment, and there be nothing due from such plaintiff by way of set-off against such judgment, and the defendant shall not within thirty days after notice in writing personally served upon such defendant requiring immediate payment of such judgment debt pay, secure, or compound for the same to the satisfaction of such plaintiff, every such defendant shall be deemed to have committed an act of insolvency on the thirty-first day after service of such notice: Provided that if such execution shall in the meantime be suspended or restrained by any rule, order, or proceeding of any Court having jurisdiction in

that behalf, no further proceeding shall be had on such notice, but it shall be lawful nevertheless for such plaintiff, when he shall again be in a situation to sue out execution on such judgment, to proceed again by notice in manner aforesaid: Provided also that if the defendant appeals against such judgment no such notice shall be given, or if given no further proceeding shall be had thereon, pending such appeal.

Imp. § 4 (g).

Person disobeying order of Court for payment of money after service of peremptory order an act of insolvency. 13. If any decree or order shall be pronounced in any cause depending in any Court or any order shall be made in any matter of insolvency against any person residing in this Island, ordering such person to pay any sum of money, and such person shall disobey such decree or order, the same having been personally served upon him, and no appeal against the same shall be pending, the person entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof pursuant thereto, may make an ex parte application to the Court by which the same shall have been pronounced to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such debtor, being personally served with such last mentioned order thirty days before the day therein appointed for payment of such money, shall neglect to pay the same, every such debtor shall be deemed to have committed an act of insolvency on the thirty-first day after the service of such order.

Imp. § 4 (g).

Notice of acts of insolvency to agents of corporate bodies, etc. 14. If any accredited agent of any body corporate or public company shall have had notice of any act of insolvency, such body corporate or company shall be deemed to have had such notice.

Imp. § 148.

No person liable upon an act of insolvency committed more than twelve months before petition. 15. No person shall be liable to be adjudged insolvent by reason of any act of insolvency committed more than twelve months prior to the filing of any petition for sequestration of his estate; and no adjudication of insolvency shall be deemed invalid by reason of any act of insolvency prior to the debt of the petitioning creditor, provided there be a sufficient act of insolvency subsequent to such debt. And with respect to the proceedings before the estate of any person is adjudged insolvent:

Imp. § 6 (1) (c).

Proceedings to originate by petition. 16. Proceedings to obtain the sequestration of the estate of any person as insolvent shall be by petition to the District Court of the district in which the debtor shall have resided or carried on business for six months next immediately preceding the time of filing such petition, except where otherwise in this Ordinance specially provided (such petition if presented by a creditor being in the form B in the Schedule annexed to this Ordinance, and the truth thereof verified by the affidavit of the petitioner in the form C in such Schedule; and if presented by a person against himself under the twentieth section of this Ordinance, being in the form D specified in such Schedule, and the truth thereof and of the matters required to be stated in the list annexed to such petition verified by the affidavit of such person in the form C specified in such Schedule); and every such petition shall be filed of record and prosecuted as directed by this Ordinance; and from and after the filing of such petition the said Court shall have full power and authority to take such order and direction with the body of the insolvent as mentioned in this Ordinance, as also with all his property, real and personal, which he shall have in his own right before he became insolvent, as also with all such interest in any such property as such insolvent may lawfully part with, and with all his money, fees, annuities, goods, wares, merchandise, and debts, where-soever they may be found or known, and to make or order sale thereof in manner herein mentioned, or otherwise order the same for satisfaction and payment of the creditors of such insolvent.

Imp. §§ 6, 95. Where a debtor is absent from Ceylon for a period of nine months, without maintaining any connections with the country, this may be regarded as a change of residence, and the six months' residence required by the Ordinance will begin from his return. — (1870), Van. 92. The proper Court for a petitioner, who has lain in prison for more than twenty-one days under a writ in execution of a judgment, to submit a petition for the sequestration for his own

estate is the Court of the district in which he resided or carried on business for six months immediately preceding his incarceration. — *In re De Silva*, (1893), 2 C. L. R. 162.

Supreme Court may direct petition to be prosecuted in any district, etc. 17. Provided that the Supreme Court or any Judge thereof shall have power, whenever such Court or Judge may deem it expedient, to order any petition against or by any person for the sequestration of his estate, to be prosecuted in any District Court with or without reference to the district in which such person resided or carried on business, and whether or not such person has resided or carried on his business for six months preceding the filing of such petition, and whether or not such person has carried on his business for that time in any particular district; or to consolidate the proceedings or any part thereof under two or more petitions for the sequestration of such estate, or to transfer any petition for such sequestration and the proceedings thereunder, and the prosecution or the further prosecution thereof, from any one District Court to any other District Court, and the Court to which any such transfer shall be made shall have and exercise full jurisdiction therein; and any such order by the Supreme Court, or by any Judge thereof, may be in such of the forms E, F, or G in the Schedule to this Ordinance annexed as may be adapted to the case, or to the like effect.

Imp. § 97. The application to the Supreme Court for an order for the sequestration of an estate without reference to the residence of the petitioner must be made in open court by the insolvent or his proctor. *Seemle*, unless such an order is made insolvency proceedings held in a wrong district are void for want of jurisdiction. — *In re Rodrigo*, (1879), 2 S. C. C. 89. To an application under this section by the debtor himself must be annexed the lists required under § 20. — *In re De Silva*, (1893), 2 C. L. R. 162.

Petitioning creditor's debt, though payable at a future time, and security given. 18. The amount of the debt of any creditor petitioning for sequestration of the estate of any person as insolvent shall be as follows, that is to say: the single debt of such creditor, or of two or more persons being partners, so petitioning shall amount to fifty pounds or upwards; and the debt of two creditors so petitioning shall amount to seventy pounds or upwards; and the debt of three or more creditors so petitioning shall amount to one hundred pounds or upwards; and every person who has given credit to any person upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such person committed an act of insolvency, may so petition or join in petitioning, whether he shall have had any security in writing for such sum or not.

Imp. § 6.

Petition by public officer of certain copartnership. 19. A petition for sequestration as insolvent of the estate of any person indebted in the amount aforesaid to any copartnership, duly authorized to sue and be sued in the name of a public officer of such copartnership, may be filed by such public officer as the nominal petitioner for and on behalf of such copartnership.

Person may petition against himself. 20. Any person may petition for the sequestration as insolvent of his own estate; and there shall be annexed to such petition a list containing a full and true account of the petitioner's debts, and the claims against him, with the names of his creditors and claimants, and the date of contracting the debts and claims severally, as near as such dates can be stated, the nature of the debts and claims and securities, if any, given for the same, and whether the same are disputed; and also a true account of the nature and amount of the petitioner's property, and an inventory of the same, and of the debts owing to him, with their dates, as nearly as such dates can be stated, and the names of his debtors, and the nature of the securities, if any, which he has for such debts: Provided that unless such person shall forthwith after the filing of his petition, and before adjudication of insolvency thereunder, make it appear to the satisfaction of the Court that his available estate is sufficient to pay his creditors at least five shillings in the pound, clear of all charges (to be estimated by the Court) of prosecuting the petition, such petition shall be dismissed, and no further petition, shall be filed by such person in the same district without the leave of the Court first obtained for that purpose; and the adjudication on any further petition shall be subject to the like condition as aforesaid as to the available estate of the petitioner: Provided, however, that it shall be lawful for any person, whatever the amount of his available estate, who shall be in actual custody within the walls of any prison in this Colony, upon any writ of execution against his person, or other like process, for or by reason of any debt, damages, or costs, at any time after twenty-one days

from the commencement of the actual custody of such prisoner, to file a declaration of insolvency, and to petition for the sequestration as an insolvent of his own estate.

Imp. §§ 4, 8. It was held, in an early case, that the Crown has a preferential right over other creditors in respect of debts due as duties, taxes, or tribute. — *Rex v. De Bedier*, (1830), *Ram.* (1820), 153. The Crown was not bound by Ord. No. 6 of 1835, nor is it by the present Ordinance. — (1853), *Aust.* 129. But since the passing of Ord. 24 of 1884 the Crown is bound by this section of the principal Ordinance. — *In re Ferdinando*, (1889), 9 S. C. C. 17; explained in *Queen's Advocate v. Silva*, (1890), 9 S. C. C. 78. See also *In re Ferdinando*, (1890), 9 S. C. C. 107.

If adjudication be not obtained within three days after petition, any other creditor may proceed on it. 21. If the petitioning creditor in any petition for sequestration of his debtor's estate as insolvent shall not proceed and obtain adjudication within three days after his petition shall have been filed, or within such extended time as shall be allowed by the Court, the Court may at any time within fourteen days then next following, upon the application of any other creditor to the amount required to constitute a petitioning creditor, proceed to adjudicate on such petition, upon the proof of the debt of such second-mentioned creditor and of the other requisites to support such petition (except the debt of the petitioning creditor); but if neither the petitioner nor any other creditor shall, within such fourteen days, or within such extended time as may be granted by the Court for that purpose, apply to the Court to adjudicate upon such petition, no further proceeding shall be taken thereon.

Imp. § 7.

Petitions may be presented against one or more partners in a firm; and petitions against two or more may be dismissed as to one without affecting the others. 22. Any creditor whose debt is sufficient to entitle him to petition for the sequestration as insolvent of the estate of all the partners of any firm may petition for such sequestration against one or more partners of such firm, and every such petition shall be valid, although it does not include all the partners of the firm; and in every petition for sequestration against two or more persons the Court may dismiss the same as to one or more of such persons, and the validity of such petition shall not be thereby affected as to any person as to whom such petition is not ordered to be dismissed, nor shall any such person's certificate be thereby affected.

Imp. §§ 110, 111.

If one member of a firm be insolvent, a petition against the others shall be filed in the same Court; proviso. 23. After a petition for sequestration filed against or by one or more member or members of a firm, any petition for sequestration against or by any other member of such firm shall be filed and prosecuted in the Court in which the first petition was prosecuted; and immediately after the adjudication under such other petition all the estate, real and personal, of any such insolvent shall vest in the assignee, if any, under the first petition; and thereafter all separate proceedings under such other petition shall be stayed, and such petition shall, without affecting the validity of the first petition, be annexed to and form part of the same: Provided that the Supreme Court, or any Judge thereof, may direct that such other petition shall be filed and prosecuted in any other District Court, or be proceeded in, either separately or in conjunction with the first petition.

Imp. § 112. The assignee in insolvency of the only partner resident in Ceylon has a right to wind up the partnership, and may bring suit in the Ceylon Courts to recover debts due to the firm. The right of the executor of a deceased partner is confined to an accounting. — *Macindoe v. Sanmugam*, (1897), 1 *Tamb.* 52.

After petition filed, if the insolvent be about to quit this Colony, or to remove or conceal his goods, he may be arrested and his goods seized; person so arrested may apply to the Court for his discharge. 24. Whenever any petition for sequestration as insolvent of the estate of any person shall have been filed against any person, and it shall be proved to the satisfaction of the Court in which such petition has been filed that there is probable cause for believing that such person is about to quit this Colony, or to remove or conceal any of his goods with intent to defraud his creditors, unless he be forthwith apprehended, it shall be lawful for the Court to issue a warrant, directed to the Fiscal, or to such person as the Court shall think fit, whereby such Fiscal or other person shall have authority to arrest the person against whom such petition shall have been filed, and also to seize his books, papers, moneys, securities for moneys, goods, and effects, wheresoever he or they may be found, and him and them safely keep until the expiration of the time allowed for adjudication on such petition, or until such person shall be adjudged insolvent

under such petition, and be thereon dealt with according to this Ordinance: Provided that any person arrested upon any such warrant, or any person whose books, papers, moneys, securities for moneys, goods, or effects have been seized under any such warrant, may apply at any time after such arrest or seizure to the Court for an order or rule on the petitioning creditor to show cause why the person arrested should not be discharged out of custody, or why his books, papers, moneys, securities for moneys, goods, and effects should not be delivered up to him; and it shall be lawful for such Court to make absolute or discharge such order or rule.

Imp. § 25.

Court, before adjudication, may summon witnesses to prove act of insolvency.

25. The Court, before adjudication, may summon before it any person whom such Court shall believe capable of giving any information concerning any act of insolvency committed by the person against whom any petition for the sequestration of his estate as insolvent has been filed, and may require any person so summoned to produce any books, papers, deeds, writings, and other documents in his custody, possession, or power which may appear to the Court to be necessary to establish such act of insolvency; and it shall be lawful for the Court to examine any such person upon oath, by word of mouth, or interrogatories in writing, concerning such act of insolvency; and such Court, before or at the time of adjudication, may examine the person by or against whom any such petition has been presented, or any other person, as to the probable value of the property of such first-mentioned person available for the payment of his debts. And with respect to the adjudication of the estate of any person as insolvent, and the proceedings for securing the property and surrender of the insolvent.

Imp. §§ 7, 27.

Adjudication, and upon what proof. **26.** The District Court, under a petition filed by a creditor, shall, upon proof of the petitioning creditor's debt and of the act of insolvency of the person against whom such petition is filed, adjudge such person insolvent; or if in case of the failure of the petitioning creditor to proceed and obtain adjudication within three days after his petition shall have been filed, or within such extended time as may be allowed by the Court, another creditor shall apply for adjudication upon such petition, then upon such application, and proof of such creditors debt, and of the act of insolvency of the person against whom such petition is filed, the Court shall adjudge such person insolvent; and under a petition filed by any person against himself the Court, upon the application of such person, and upon proof of the filing a declaration of insolvency, and of the sufficiency of his available estate to the extent required by this Ordinance, or upon proof of the filing of such declaration of insolvency, and that such person has been in actual custody within the walls of a prison for debt for more than twenty-one days, shall adjudge such person insolvent.

Imp. § 7. An insolvent who has not obtained his discharge under a previous adjudication may nevertheless be adjudicated insolvent in a subsequent proceeding. In this case the creditors under the first insolvency are entitled to rank as creditors in the second proceeding. — *In re Pullé, Ex parte Neate*, (1887), 8 S. C. C. 118.

Attachment upon the estate, and how to be made. **27.** Forthwith, after any person shall be adjudged insolvent, the District Court shall issue to the Fiscal an order (in the form H in the Schedule annexed to this Ordinance) placing the estate of the insolvent under sequestration in his hands, and such Fiscal shall enter and lay an attachment on the estate, under inventory thereof; and when the same shall be sequestered upon the petition of any creditor the said Fiscal shall be accompanied by the petitioning creditor, or some one authorized by him, on behalf of himself and the other creditors of the said estate; and when the said estate shall be sequestered upon the petition of any insolvent against himself, it shall be lawful for any of the creditors, or for the agent of any of the creditors, of the insolvent to accompany the Fiscal and to be present with him while making out the inventory aforesaid.

Imp. § 9. Where a person mortgaged a coffee estate to another, and subsequently became insolvent and the estate was placed in the possession of the assignee in bankruptcy, it was held that the mortgagee, although he had brought suit on the mortgage and obtained a final judgment thereon, was not entitled to the possession of the estate or crops but only to the proceeds realized from the Fiscal's sale under the judgment and that the assignee had the right to possession at least until seizure by the Fiscal. — *Breard v. Hedges*, (1880), 3 S. C. C. 16.

Attachment of personal property how to be made, and as to penalty for defeating the same. **28.** When any personal property belonging to any insolvent is attached

as aforesaid in virtue of any order for the sequestration thereof, the Fiscal making such attachment shall leave with the person in whose possession any such property is attached a copy of the said inventory, having subjoined thereto a notice in the English language, and also, if he does not understand English, in the language spoken by such person, that the property therein specified has been attached by the said Fiscal, by virtue of an order of the Court for the sequestration thereof; and any person who, knowing the same to have been so attached, shall dispose of, remove, conceal, or receive the same, or any part thereof, with intent to defeat the said attachment, shall be liable on conviction of such offence to be transported for any period not exceeding seven years, or to be imprisoned, with or without hard labour, for any period not exceeding five years: Provided that it shall be lawful for such Fiscal to secure on the premises, by sealing up in any room or repository, any articles which in the discharge of his duty it shall seem to him expedient so to secure, causing no unnecessary hindrance or inconvenience to any party by so doing, or to leave some person on the premises in charge thereof; and the said Fiscal shall forthwith report his execution of the said attachment to the said Court, and the Court may give such directions for the safe custody of the said property as shall seem fit.

If petitioning creditor's debt insufficient, Court may proceed upon the application of any other creditor. 29. If, after adjudication of insolvency, the debt of the petitioning creditor be found by the Court to be insufficient to support such adjudication, it shall be lawful for the Court upon the application of any other creditor having proved any debt sufficient to support an adjudication, to order the petition for sequestration to be proceeded in, and it shall by such order be deemed valid, which order may be in the form I in the Schedule to this Ordinance annexed, or to the like effect.

Imp. § 7 (6). See note § 20.

Insolvent to have notice of adjudication, and to be allowed a certain time to show cause against it before advertisement; proviso; adjudication may, with insolvent's consent, be advertised before the time for showing cause. 30. Before notice of any adjudication of insolvency shall be given in the *Gazette* of this Colony, and at or before the time of putting in execution any order of sequestration which shall have been granted upon such adjudication, a duplicate of such adjudication shall be served on the person adjudged insolvent, personally or by leaving the same at the usual or last known place of abode or place of business of such person; and such person shall be allowed seven days, or such extended time not exceeding fourteen days in the whole as the Court shall think fit, from the service of such duplicate, to show cause to the Court against the validity of such adjudication; and if such person shall within such time show to the satisfaction of the Court that the petitioning creditor's debt, and the act of insolvency upon which such adjudication has been grounded, or either of such matters, are insufficient to support such adjudication, and upon such showing no other creditor's debt and act of insolvency sufficient to support such adjudication, or such of the said last-mentioned matters as shall be requisite to support such adjudication, in lieu of the petitioning creditor's debt and act of insolvency, or either of such matters which shall be deemed insufficient in that behalf, as the case may be, shall be proved to the satisfaction of the Court, the Court shall thereupon order (in the form K in the Schedule to this Ordinance annexed, or to the like effect) such adjudication to be annulled, and the same shall by such order be annulled accordingly; but if at the expiration of the said time no cause shall have been shown to the satisfaction of the Court for the annulling of such adjudication, the Court shall forthwith, after the expiration of such time, cause notice of such adjudication to be given in the said *Gazette*, and, if the Court considers it expedient, in the *London Gazette* and in the *Gazettes* published at each of the presidencies of India, and shall thereby appoint two public sittings of the Court for the insolvent to surrender and conform, the last of which sittings shall be on a day not less than thirty days and not exceeding sixty days from such advertisement in the *Gazette* of this Colony, and shall be the day limited for such surrender; and copies and translations of such advertisement shall also be affixed on the wall of the District Court and of the nearest Cutcherry: Provided that the Court shall have power from time to time to enlarge the time for the insolvent surrendering himself for such time as the Court shall think fit, so as every such order be made six days at least before the day on which such insolvent was

to surrender himself; and also from time to time to adjourn either of the said sittings if the Court shall deem it necessary to do so: Provided also that if any person so adjudged insolvent shall, before the expiration of the time allowed for showing cause, surrender himself and give his consent, testified in writing under his hand, to such adjudication being advertised, the Court after such consent so given shall forthwith cause the notice of adjudication to be advertised, and appoint the sittings for the insolvent to surrender and conform.

Imp. §§ 13, 17. The District Court has power to annul an adjudication in insolvency independently of the Ordinance. The motion for the annulment must not be ex parte, and good reasons for the annulment must be shewn. — *In re Rowlands*, (1880), 4 S. C. C. 2.

Insolvent to deliver up his books of accounts to the Court upon oath; to attend to assignees; to be at liberty to inspect books, etc.; after allowance of certificate to attend assignees in settling accounts; allowance for attendance. 31. Forthwith after the insertion of the notice of adjudication in the *Gazette* of this Colony, or, if the insolvent before the expiration of the time allowed for showing cause against the adjudication surrender himself and give consent to such insertion, forthwith after such surrender, the insolvent shall (if thereto required by the Court) deliver up to the Court upon oath all books of account, papers, and writings relating to his estate in his custody or power, and discover such as are in the custody or power of any other person; and every insolvent not in prison or custody shall at all times after such surrender attend the assignees, upon every reasonable notice in writing for that purpose given by them to him or left at his usual or last known place of abode, and shall assist such assignees in making out the accounts of his estate; and such insolvent after he shall have surrendered may, at all seasonable times before the expiration of such time as shall be allowed to him to finish examination, inspect his books, papers, and writings in the presence of his assignees, or any person appointed by them, and bring with him each time any two persons to assist him; and every such insolvent after he shall have obtained his certificate shall, upon demand in writing given to him or left at his usual or last known place of abode, attend the assignees to settle any accounts between his estate and any debtor to or creditor thereof, or attend any Court to give evidence touching the same, or do any act necessary for getting in or protecting the said estate, for which attendance he shall be paid by the assignees out of his estate such sum, not exceeding ten shillings per day, as they shall deem reasonable.

Imp. § 16. The assignee is entitled to the custody of the letter books of the insolvent, even though they contain some private letters. — *In re Clark*, (1838), Morg. § 592. An order withdrawing protection set aside. — *In re Bastian Appu*, (1867), Ram. 1863, 232.

Search warrants in what cases. 32. In all cases where it shall be made to appear to the satisfaction of the District Court that there is reason to suspect and believe that any property of any insolvent is concealed in any house or other place not belonging to such insolvent, the Court may grant a search warrant to the Fiscal or other person appointed by the Court, and it shall be lawful for such Fiscal or other person to execute such warrant according to the tenor thereof; and such Fiscal or other person shall be entitled to the same protection as is allowed by law in execution of a search warrant for property reputed to be stolen, and every such search warrant shall be in the form L in the Schedule to this Ordinance annexed, or to the like effect.

No action against persons for acting under warrant of the Court, without demand or copy of warrant. 33. No action shall be brought against any Fiscal or other person appointed by the Court for anything done in obedience to any warrant of the Court, unless demand of the perusal and copy of such warrant hath been made or left at the usual place of abode of such Fiscal or other person by the party intending to bring such action, or by his proctor or agent, in writing, signed by the party demanding the same, and unless the same hath been refused or neglected for six days after such demand; and if after such demand, and compliance therewith, any action be brought against such Fiscal or person so appointed, without making the petitioning creditor defendant, if living, the Court at the trial of such action, on the production and proof of such warrant, shall give judgment for the defendant, notwithstanding any defect of jurisdiction in the Court by which such warrant shall have been granted; and if such action be brought against the petitioning creditor and the Fiscal or person so appointed, the Court shall, on proof of such warrant, give judgment for such Fiscal or person so appointed, notwithstanding

any such defect of jurisdiction; and if the judgment shall be given against the petitioning creditor, the plaintiff shall recover his costs against him, to be taxed so as to include such costs as the plaintiff is liable to pay to the Fiscal or person so appointed as aforesaid.

Proof in such actions that defendant is petitioning creditor sufficient to render him liable. 34. In any such action brought against the petitioning creditor, either alone or jointly with any Fiscal or other person so appointed by the Court, for anything done in obedience to the warrant of the Court, proof by the plaintiff in such action that the defendant or defendants or any of them is or are petitioning creditor or creditors shall be sufficient for the purpose of making such defendant or defendants liable in the same manner and to the same extent as if the act complained of in such action had been done or committed by such defendant or defendants.

Fiscal may break open the insolvent's doors, etc., and seize upon his body or property. 35. It shall be lawful for any Fiscal, acting under warrant of the Court, to break open any house, chamber, shop, warehouse, door, trunk, or chest of any insolvent where such insolvent or any of his property shall be reputed to be, and seize upon the body or property of such insolvent; and if the insolvent be in prison or in custody, it shall be lawful for the Fiscal to seize any property of the insolvent (his necessary wearing apparel only excepted) in the custody or possession of such insolvent, or of any other person, in any prison or place where such insolvent is in custody.

Insolvent not in custody to be free from arrest in coming to surrender, etc. 36. If the insolvent be not in prison or custody at the date of the adjudication, he shall be free from arrest or imprisonment by any creditor in coming to surrender, and after such surrender during the time by this Ordinance limited for such surrender, and for such further time as shall be allowed him for finishing his examination, and for such time after finishing his examination until his certificate be allowed, as the Court shall from time to time by indorsement upon the summons of such insolvent, or by writing under the hand of the Judge of such Court, think fit to appoint; and whenever any insolvent is in prison or in custody under any process, attachment, execution, commitment, or sentence, the Court may by warrant directed to the person in whose custody he is confined cause him to be brought before it at any sitting, either public or private, and if he be desirous to surrender, he shall be so brought up, and the expense thereof shall be paid out of his estate, and such person shall be indemnified by the warrant of the Court for bringing up such insolvent; and where any person who has been adjudged insolvent, and has surrendered and obtained his protection from arrest, is in prison or in custody for debt at the time of his obtaining such protection, the Court may, except in the cases next hereinafter mentioned, order his immediate release, either absolutely or upon such conditions as it shall think fit: Provided that the Court shall not order such release where it shall appear by any judgment, order, commitment, or sentence under which the insolvent is in prison or in custody, or by the record or entry of any such judgment, order, commitment, or sentence, and the pleadings or proceedings previously thereto, that he is in prison or in custody for any debt contracted by fraud or breach of trust, or by reason of any prosecution against him whereby he had been convicted of any offence, or for any debt contracted by reason of any judgment in any proceeding for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious trespass, or maliciously filing or prosecuting a petition for sequestration of the estate of any person as insolvent, unless it shall appear to the satisfaction of the Court that the insolvent shall at the time of this Ordinance coming into operation, or at any time thereafter, have been in prison or custody under or by reason of any such judgment, order, commitment, or sentence as aforesaid for a period of or exceeding one year. Provided also that such release shall in nowise affect any rights of the creditor at whose suit the insolvent may be in prison or in custody against the insolvent except the right of detaining him in prison or in custody whilst protected from imprisonment by order of the Court.

This section applies to Crown debtors. — Ord. No. 24 of 1884, § 6. Where a person who has been adjudged an insolvent, and surrendered and obtained his protection from arrest, and is in prison, the Court may, subject to the provisos to the section order his immediate release. The proper time for the application for the release from custody is after the appointment of the assignee. — *In re Saraye Ledde*, (1891), 1 S. C. R. 53. The insolvent must surrender before he is entitled to

his release from custody. — In re Fernando, (1891), 1 C. L. R. 39. The discharge of an insolvent in custody is in the discretion of the Court. — In re Saraye Ledde, (1891), 1 S. C. R. 53; In re Hadjar Abdul Gaffoor (1908), 11 N. L. R. 353; overruling In re Ibrahim Saiboe, (1856), 1 Lor. 124. After a person is adjudicated insolvent he is entitled to protection until the conclusion of the examination. — In re Punchihewage Don Juanis, (1888), 1 C. L. R. 23. The breach of an agreement to pay to another moneys received for goods sold on joint account is not a breach of trust within the meaning of the provisos to this section. — In re Jusey Silva, (1856), 1 Lor. 137. *Seemle*, where a debtor is committed to prison on a writ of execution and afterward adjudicated insolvent on his own petition, he is not entitled to be discharged without notice to his creditors, where the debt in respect of which he was committed involves fraud or breach of trust. — Ram. 1877, 319. This section does not protect against attachment for contempt of Court in not obeying an order to pay trust moneys into Court. — Botticelli v. Ribeira, (1872), Ram. 1872, 12. An insolvent can not be required to furnish bail for his appearance. — (1856), Aust. 239. As to privilege of insolvent when attending Court on notice, see In re Jayesekera, (1896), 1 Br. 4.

If arrested, to be discharged on producing protection. 37. If any insolvent shall be arrested for debt in coming to surrender, or shall after his surrender and while protected by order of the Court be so arrested, he shall, on producing such protection to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any officer shall detain any such insolvent after he shall have shown such protection to him, except for so long as shall be necessary for obtaining a copy of the same, such officer shall forfeit to such insolvent, for his own use, the sum of five pounds for every day he shall detain such insolvent, to be recovered by action in any competent Court in the name of such insolvent, with costs of suit.

This section applies to Crown debtors. — Ord. No. 24 of 1884, § 6.

Petitioning creditor to proceed at his own costs until choice of assignees. 38. The petitioning creditor shall, at his own cost, file and prosecute his petition until the choice of assignees by the creditors; and the Court shall at or after the sitting for such choice make order for the payment thereof out of the estate of the insolvent.

Imp. § 73. Under Ord. No. 6 of 1835 the assignee, and not the petitioning creditor, was liable for the expenses of appraising the property of the insolvent. — In re Hudson, (1848), Ram. 1843, 108; Jumeaux v. Tompson, (1848), Ram. 1843, 109.

No objection to petition for sequestration that the act of insolvency was concerted. 39. No petition for sequestration of the estate of any person as insolvent shall be dismissed, nor any adjudication thereon reversed, by reason only that the petition, or adjudication, or act of insolvency has been concerted or agreed upon between the insolvent, his proctor or agent, or any of them, and any creditor or other person.

Court may proceed notwithstanding death of insolvent. 40. If any person shall die after he has been adjudged insolvent, the Court may proceed in the matter of such insolvency as if such insolvent were living.

Imp. § 108.

Court may summon and examine insolvent. 41. The Court may summon any insolvent before it, whether such insolvent shall have obtained his certificate or not; and in case he shall not come at the time appointed by the Court (having no lawful impediment made known to and allowed by the Court at such time), it shall be lawful for the Court, by warrant, to authorize and direct the Fiscal, or any person the Court shall think fit, to apprehend and arrest such insolvent and bring him before the Court; and upon the appearance of such insolvent, or if such insolvent be present at any sitting of the Court, it shall be lawful for the Court to examine or to permit the examination by the creditors of such insolvent after he shall have made and signed a declaration in the form M in the Schedule to this Ordinance annexed, either by word of mouth or on interrogatories in writing, touching all matters relating to his trade, dealings, or estate, or which may tend to disclose any secret grant, conveyance, or concealment of his lands, goods, money, or debts, and to reduce his answers into writing, which examination, so reduced into writing, the said insolvent shall sign.

Imp. §§ 24, 25. Cp. Selby v. Fernando, (1853), Ram. 1843, 47. But see now Ord. 24 of 1884.

Court may summon and examine the insolvent's wife. 42. It shall be lawful for the Court to summon before it the wife of any insolvent, and to examine her, or to permit her examination by the creditors of such insolvent, after she shall have made and signed a declaration in the form M in the Schedule to this Ordinance annexed, either by word of mouth or interrogatories in writing, for the finding out and discovery of the property of such insolvent concealed, kept, or disposed of by

such wife in her own person or by her own act, or by any other person, and she shall incur such danger or penalty for not coming before the Court, or for refusing to make and sign such declaration and to be examined, or to sign her examination, or for not fully answering to the satisfaction of the Court, as is hereinafter provided.

Imp. § 27 (1).

If insolvent keep out of the way, or be about to quit this Colony, etc., warrant.

43. If in any case it shall be proved to the satisfaction of the Court that any insolvent is keeping out of the way and can not be personally served with a summons, and that due pains have been taken to effect such personal service, or that there is probable cause for believing that he is about to quit this Colony, or to remove or conceal any of his goods or effects, unless he be forthwith apprehended, it shall be lawful for such Court, by warrant, to authorize and direct the Fiscal, or any person it shall think fit, to apprehend and arrest such insolvent, and bring him before the Court to be examined in like manner as if he appeared upon a summons.

Imp. § 25.

Court may summon persons suspected of having insolvent's property, etc.; and if they fail to attend, warrant. **44.** After any person has been adjudged insolvent it shall be lawful for the District Court to summon before it any person known or suspected to have any of the estate of the insolvent in his possession, or who is supposed to be indebted to the insolvent, or any person the Court may believe capable of giving information concerning the person, trade, dealings, or estate of the insolvent, or concerning any act of insolvency committed by him, or any information material to the full disclosure of his dealings; and the Court may require such person to produce any books, papers, deeds, writings, or other documents in his custody or power which may appear to the Court necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which the Court is authorized to inquire into; and if such person so summoned as aforesaid shall not come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), it shall be lawful for the Court by warrant to authorize and direct the Fiscal, or other person therein named for that purpose, to apprehend and arrest such person and bring him before the Court for examination.

Imp. § 27.

Service of summons where person keeps out of the way. **45.** Where it shall be shown by affidavit to the satisfaction of the Court that any person to whom any such summons is directed as aforesaid is keeping out of the way and can not be personally served therewith, and that due pains have been taken to effect such personal service, it shall be lawful for the Court to order by endorsement upon the summons that the delivery of a copy of such summons to the wife or servant, or some adult inmate of the house or family of the person at his usual or last known place of abode or business, and explaining the purport thereof to such wife, servant, or inmate, shall be equivalent to personal service; and in every such case the service of such summons in pursuance of such order shall be and be deemed and taken to be of the same force and effect to all intents and purposes as if the party to whom such summons was directed had been personally served therewith.

Power to examine persons summoned or present at any sitting. **46.** Upon the appearance of any person summoned or brought before the Court upon any warrant as aforesaid, or if any person be present at any sitting of the Court, it shall be lawful for the Court to examine or to permit the examination by the creditors of every such person upon oath, either by word of mouth or by interrogatories in writing, concerning the person, trade, dealings, or estate of any insolvent or concerning any act of insolvency by any insolvent committed, and to reduce into writing the answers of every such person; and such answers so reduced into writing such person examined is hereby required to sign.

Imp. § 27.

Court may order payment of debts admitted to be due to the estate; such order to have effect of judgment; proviso. **47.** If any person examined as last aforesaid shall, in and by his examination signed as aforesaid, and also in and by a separate writing in the form N in the Schedule to this Ordinance annexed, admit that he is indebted to the insolvent in any sum of money upon the balance of accounts, it shall be lawful for the Court, if it think fit, to order (in the form O in the Schedule to this Ordinance annexed, or to the like effect) that such person shall forthwith,

or at such time and in such manner as to the Court may seem expedient, pay the amount so admitted, in full discharge thereof, to the assignees, together with the costs of and incident to the summons of such person, if the Court think fit to award costs, or the Court may, if it think fit, in the said form O, order the assignees to pay the costs of the person summoned out of the estate of the insolvent; and every such order shall have the effect of a judgment in the said Court, and may be enforced accordingly: Provided always that no such order shall be made unless such party has been informed by the Judge of the effect of such admission before the same is signed as aforesaid: Provided also, that if part only of the sum actually due be so admitted, or if the Court make an order for part only of the sum admitted, the residue may be recoverable in the same manner in all respects as if no such admission or order had been made.

Imp. § 27 (4).

Court may order letters addressed to insolvent to be re-directed or delivered to assignees, etc. 48. The District Court may order that for a period of three months from the date of any such order all post letters directed or addressed to any insolvent at the place of which he shall be described in the petition for sequestration of his estate as insolvent, shall be re-directed, re-addressed, sent, or delivered by the Postmaster-General of this Colony, or the officers acting under him, to the assignees named in such order; and upon notice by transmission of a duplicate of any such order to the Postmaster-General, or the officers acting under him, by the assignees or other person named in such order, of the making of such order, it shall be lawful for the Postmaster-General, or such officers as aforesaid, to re-address, re-direct, send, or deliver all such post letters to the assignees named in such order accordingly; and the Court may, upon any application to be made for that purpose, renew any such order for a like or for any other less period as often as may be necessary. And with respect to the power of the District Court over certain descriptions of property:

Imp. § 26.

Goods in the possession, order, or disposition of the insolvent to be deemed his property; proviso for assignments of vessels under 8 and 9 Vic. c. 89. 49. If any insolvent, at the time he commits the act of insolvency, shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition any goods or effects whereof he was reputed owner, or whereof he had taken upon him the sale or disposition as owner, the Court shall have power to order the same to be sold or disposed of for the benefit of the creditors of the insolvent: Provided that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt, either by way of mortgage or assignment, duly registered according to the provisions of an Act made in the Parliament holden in the eighth and ninth years of the reign of Her Majesty, entitled "An Act for the registering of British vessels," or any of the Acts therein mentioned.

Imp. § 44. A mortgage of moveables effected by a notarial bond, even without delivery of possession, gives to the mortgagee a priority as against the assignee. — *In re Ledward*, (1857), 3 *Lor.* 49.

Consigned goods, etc., to be given up to the owner. 50. But if there shall be found among the insolvent's property at the time of its seizure any wares, goods, or merchandise consigned to him for the special purpose of being sold by him on commission, or intrusted in his hands for any specific purpose, and which evidently are the property of the consignor or person so intrusting, notice thereof shall be transmitted to the owners as soon as possible, in order that they may take the necessary measures to secure their property, and the same shall be carefully preserved, and shall be delivered over to the lawful owners.

Imp. § 44. Upon the insolvency of a factor the persons who have entrusted goods to such factor for sale on commission are entitled to a return of the goods, or if the goods have been sold, to the proceeds thereof. — *De Busch v. Young*, (1827), *Ram.* 1820, 95; *De Busch v. Young*, (1827), *Ram.* 1820, 107.

Conveyances, etc., by insolvent without valuable consideration, void. 51. If any person adjudged insolvent under this Ordinance shall (except upon the marriage of any of his children, or for some valuable consideration) have conveyed, assigned, or transferred to any of his children, or to any other person, any real or personal property whatsoever, or have delivered or made over to any such person any bills, bonds, notes, or other securities, or have transferred his debts to any other person,

or into any other person's name, such first-mentioned person being at the time of making any such conveyance, assignment, transfer, or delivery insolvent, the Court shall have power to order any such property to be sold and disposed of for the benefit of the creditors under the insolvency; and every such sale shall be valid against the insolvent and such children and persons, and against all persons claiming under him.

Imp. § 48.

Seizure of goods for rent not to be available for more than one year's rent due; the landlord to prove for the residue. 52. No seizure or detention of the goods of any insolvent for rent made after an act of insolvency, and whether before or after the filing of the petition for sequestration of his estate, shall be available for more than one year's rent accrued prior to the day of the filing of such petition, but the landlord or person to whom the rent shall be due shall be allowed to come in as creditor for the overplus of the rent due, and for which the goods seized shall not be available.

Imp. § 42.

Where insolvent is a trustee, the Court may order conveyance or assignment to another trustee. 53. If any insolvent shall as trustee be seized, possessed of, or entitled to, either alone or jointly, any real or personal estate, or any interest secured upon or arising out of the same, or shall have standing in his name as trustee, either alone or jointly, any funds or annuities, or any of the stock of any public company in this Colony, it shall be lawful for the Court, on the petition of the person entitled in possession to the receipt of the rents, issues and profits, dividends, interest, or produce thereof, on due notice given to all other persons, if any, interested therein, to order the assignees, and all persons whose act or consent thereto is necessary, to convey, assign, or transfer the said estate, interest, funds, or annuities to such person as the said Court shall think fit, upon the same trusts as the said estate, interest, funds, or annuities were subject to before the insolvency, or such of them as shall be then subsisting and capable of taking effect, and also to receive and pay over the rents, issues and profits, dividends, interest, or produce thereof as the Court shall direct.

Imp. § 147.

Title to property sold not to be impeached unless insolvency disputed within a certain time. 54. No title to any real or personal estate sold under any insolvency shall be impeached by the insolvent, or any person claiming under him, in respect of any defect in the petition for sequestration, or in any of the proceedings under the same, unless the insolvent shall, within the time allowed by this Ordinance, have commenced proceedings to dispute, dismiss, or annul the petition or adjudication thereunder, and duly prosecuted the same.

The Court, after adjudication, may order any agent of the insolvent to deliver over all moneys, etc. 55. After the adjudication of insolvency in any case shall have been advertised in the *Gazette* of this Colony, it shall be lawful for the Court to order any treasurer or other officer, or any banker, attorney, proctor, or other agent of the insolvent, to pay and deliver over to the assignees, to the credit of the estate of such insolvent, all moneys or securities for moneys in his custody, possession, or power as such officer or agent, and which he is not by law entitled to retain the insolvent or his assignees. And with respect to transactions with the insolvent, and executions against his property up to the time of the filing of the petition for sequestration of his estate as insolvent or within a limited time previously thereto:

Imp. § 44.

Payment by insolvent; conveyances by him; contracts and dealings with him; and executions; in what cases valid, if no notice of act of insolvency; but not to extend to fraudulent preferences, etc. 56. All payments really and bona fide made by any insolvent, or by any person on his behalf, before the filing of a petition for sequestration of his estate as insolvent to any creditor of such insolvent, and all payments really and bona fide made to any insolvent before the filing of such petition, and all conveyances by any insolvent bona fide made and executed before the filing of such petition, and all contracts, dealings, and transactions by and with any insolvent really and bona fide made and entered into before the filing of such petition, and all executions and attachments against the lands of any insolvent bona fide executed by seizure, and all executions and attachments against the goods

and effects of any insolvent bona fide executed and levied by seizure and sale before the date of the filing of such petition, shall be deemed to be valid notwithstanding any prior act of insolvency by such insolvent committed, provided the person so dealing with or paying to or being paid by such insolvent, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such payment, conveyance, contract, dealing, or transaction, or at the time of such executing or levying such execution or attachment, or at the time of making any sale thereunder, notice of any prior act of insolvency by him committed: Provided always that nothing herein contained shall be deemed or taken to give validity to any payment, or to any delivery or transfer of any goods or effects made by any insolvent being a fraudulent preference of any creditor of such insolvent, or to any conveyance or mortgage made or given by any insolvent by way of fraudulent preference of any creditor of such insolvent, or to any execution founded on a judgment on a power of attorney to confess judgment or consent to a judgment given by any insolvent by way of fraudulent preference.

Imp. § 49. See notes § 58, *infra*. A mortgage of moveables given on the eve of the insolvency in pursuance of a previous verbal promise, on the faith of which the mortgagee lent money to the mortgagor, is not a fraudulent preference. — *In re Ledward*, (1857), 3 Lor. 197. The alienation of immoveable property for valuable consideration after the entry of a judgment against the grantor, but before the seizure of the property, where the grantor was not insolvent at the time of the alienation, does not amount to fraud, although the sale was made with the intention of preventing the seizure of the property in execution. — *Natchia v. Mariker Aassen*, (1901), 2 Br. 205. Where property of a debtor is seized by the Fiscal in execution of a judgment, and subsequent to the seizure, but before the sale of the property, a petition in insolvency is filed against the debtor, and an adjudication made thereon, the judgment creditor is entitled to be paid his judgment debt in preference to the other creditors. — *Ramen Chetty v. Anstruther*, (1889), 9 S. C. C. 54; overruling *Brown v. Fernando*, (1888), 8 S. C. C. 162. A voluntary assignment made by a person who though not actually insolvent at the time of the assignment is engaged in speculation which made insolvency not merely a possible but a probable contingency is a fraudulent conveyance. — *In re Fernando*, (1869), Van. 14. See also, (1870), Van. 53. Where a transaction is sought to be set aside as in fraud of creditors, the fraudulent intent must be shown, and also that a creditor has thereby been prevented from recovering his debt. Mere suspicion of fraud is not sufficient. — *In re Brodie*, (1877), Ram. 1877, 99; *Baba Etana v. Dassi Teramanse*, (1896), 2. Br. 355; 3 Tamb. 101.

Bona fide purchases not to be impeached by notice of act of insolvency, unless petition be filed within twelve months after the act of insolvency. 57. No purchase from any insolvent bona fide for valuable consideration, where the purchaser had notice at the time of such purchase of an act of insolvency by such insolvent committed, shall be impeached by reason thereof, unless a petition for sequestration of the estate of such insolvent shall have been filed within twelve months after such act of insolvency.

Fraudulent preferences according to the law of England to be deemed such in like cases within this Colony. 58. Every transaction, dealing, transfer, delivery, alienation, mortgage, pledge, or payment by any insolvent to or with any creditor of such insolvent, or to or with any other person, which by the law of England at the corresponding period would be and be deemed to be a fraudulent preference of one creditor before other creditors in any proceeding in bankruptcy, or in any suit or action, shall, in the like case arising within this Colony, be and be deemed to be a fraudulent preference according to the true intent and meaning of this Ordinance.

Imp. § 48. See note § 56, *supra*. The law of England introduced by this section is not confined to the Bankruptcy Acts in force at the corresponding period, but includes all the English law relating to fraudulent preferences, including 13 Eliz. c. 5. — *Ram*, 1877, 89; Cp. note by the Editor on p. 98. Voluntariness of a conveyance, when coupled with insolvency, will invalidate a settlement made in favour of a wife. — *Kershaw's Case*, (1863), *Ram*, 1860, 157.

Certain powers of attorney to confess judgment, and consents to judgments, given within two months of filing petition, to be null and void. 59. Every power of attorney to confess judgment in any personal action given by any insolvent after the commencement of this Ordinance, and within two months of the filing of a petition for sequestration of his estate by or against such insolvent, and being for or in respect of (wholly or in part) an antecedent debt or money demand, and every consent to a judgment given by any insolvent at any time after the commencement of this Ordinance, and within two months of the filing of any such petition, in any action commenced by collusion with the insolvent, and not ad-

versely or purporting to have been given in an action, but having been in fact given before the commencement of any action against the insolvent, such insolvent being unable to meet his engagements at the time of giving such power of attorney or consent (as the case may be), shall be deemed and taken to be null and void, whether the same shall have been given by such insolvent in contemplation of the sequestration of his estate as insolvent or not. And with respect to stamps:

Deeds and other instruments relating to insolvency not liable to stamp duty.

60. No deed, conveyance, assignment, admission, or other assurance of or to or relating solely to any lands, or to any mortgage, charge, or other incumbrance upon, or any estate, right, or interest of and in any lands or personal estate, being the estate of or belonging to any insolvent, or part or parcel thereof, and which after the execution of such deed, conveyance, assignment, or assurance respectively shall either be or remain the estate and property of such insolvent, or of the assignees appointed or chosen under any insolvency, and no power of attorney, order, certificate of conformity, affidavit, or other instrument or writing whatsoever relating solely to the estate or effects of any insolvent, or to any part thereof, or to any proceeding under any insolvency, and no affidavit, bond, or other proceeding under this Ordinance relating solely to insolvency matters, shall be liable to any stamp duty, save and except such stamp duty as is mentioned in Schedule P to this Ordinance annexed.

Certain documents to be stamped. **61.** Every document enumerated in the Schedule P to this Ordinance annexed shall be printed or written upon paper having the stamp duty set opposite to such document respectively in such Schedule: Provided that where any such document shall consist of more than one sheet, only the first sheet thereof shall be impressed with such stamp.

Provisions of Stamp Ordinance to extend to stamps under this Ordinance. **62.** The provisions contained in the Ordinance for the time being in force relating to stamps shall (so far as the same are applicable and consistent with the provisions of this Ordinance), in all cases not hereby expressly provided for, be of full force and effect with respect to the stamps to be provided under and by virtue of this Ordinance, and to the paper on which the same shall be impressed, and shall be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been herein repeated and specially enacted with reference to the said last mentioned stamps and sums of money respectively.

Documents not to be received unless stamped; proviso. **63.** No document which by this Ordinance is required to have a stamp impressed thereon shall be received or filed or be used in relation to any proceedings in the Court, or be of any validity for any purpose whatever, unless or until the same shall have a stamp impressed thereon: Provided that if at any time it shall appear that any such document which ought to have had a stamp impressed thereon has, through mistake or inadvertence, been received or filed or used without having such a stamp, it shall be lawful for the Court, if it think fit, to order that such stamp shall be impressed thereon; and thereupon, when a stamp shall have been impressed on such document in compliance with such order, such document and every proceeding in reference thereto shall be as valid and effectual as if such stamp had been impressed thereon in the first instance. And with respect to the appointment by the Court of provisional assignees:

As to appointment by Court of provisional assignee; proviso. **64.** It shall be lawful for the District Court, on cause shown by any person interested in the due administration of the insolvent estate at any time after the adjudication of insolvency, by order of Court to appoint one or more fit person or persons to be assignee or assignees of any insolvent estate provisionally, and until the creditors of the said estate shall have made choice of assignees, which provisional assignees may be removed at the meeting of creditors for the choice of assignees if the said creditors shall think fit, or may then be chosen as assignees, but shall and may, until so removed, act in the collection, administration, and distribution of the said estate in all respects the same as assignees elected by the creditors are by this Ordinance authorized or required to do: Provided that no such provisional assignees shall proceed to make sale of any part of the said estate without the authority for that purpose of the said Court first had been obtained.

Effect of appointment of provisional assignee. 65. Every order of Court appointing provisional assignees shall, so soon as made, have the effect in law to vest in such provisional assignees for the uses and purposes of the sequestration, and until their removal, all the present and future estate of the insolvent, real and personal, as fully and completely to all intents and purposes as the said estate is by virtue of the 70th and 71st sections of this Ordinance vested in the assignees chosen by the creditors. And with respect to the choice of assignees, and their rights and duties:

Assignees when and how chosen; Court may reject or remove any person chosen as unfit 66. At the first public sitting appointed by the Court under any insolvency, or at any adjournment thereof, assignees of the insolvent's estate and effects shall and may be chosen and appointed; and all creditors who have proved debts to the amount of ten pounds and upwards shall be entitled to vote in such choice; and also any person authorized by letter of attorney from any such creditor, upon proof of the execution thereof, either by affidavit or by oath before the Court *vivâ voce*; and the choice and appointment shall be by the major part in value of the creditors so entitled to vote: Provided that the Court shall have power to reject any person so chosen who shall appear to such Court unfit to be an assignee, or to remove any assignee; and upon such rejection or removal a new choice and appointment of another assignee shall be made in like manner.

Imp. §§ 21, 86, 87. This section is merely directory. Assignees may be appointed at any other time as may be necessary, at a meeting duly called by the Court for that purpose, and before the final settlement of the proceedings. — *In re Mais*, (1873), Gren. III. 98. The discretion exercised by the District Court in rejecting an assignee will not be interfered with by the Supreme Court, except under exceptional circumstances. The person rejected as assignee must be personally unfit for the office. The proved creditors may vote either in person or by proxy. — *In re Awenna Keena Muna Mohamradu Ibrahim Neyna*, (1897), 3 N. L. R. 92. The authorization to vote must be by a letter of attorney. A mere proxy to a proctor authorizing him to vote in the choice of an assignee is not sufficient. — *In re Harris*, (1904), 10 N. L. R. 88. The assignee is practically an officer of the Court. — *In re Pitche Tamby*, (1908), 3 A. C. 163; 11 N. L. R. 205. As to the method of proving the appointment of an assignee, see *Banda v. Banda*, (1900) 4 N. L. R. 302.

Joint creditor entitled to prove under separate estate for the purpose of voting in the choice of assignees. 67. If one or more of the partners of a firm be adjudged insolvent, any creditor to whom the insolvent is indebted jointly with the other partners of the firm, or any of them, shall be entitled to prove his debt for the purpose only of voting in the choice of assignees and of being heard against the allowance of the insolvent's certificate, or of either of such purposes; but such creditor shall not receive any dividend out of the separate estate of the insolvent until all the separate creditors shall have received the full amount of their respective debts.

Imp. § 59 (1).

Who incompetent to be appointed assignee. 68. In no case shall it be competent for the creditors to elect as assignee the insolvent himself, or any person related to the insolvent by consanguinity or affinity within the fourth degree, nor any minor, nor any proctor, nor any person not resident within this Colony, nor any person having an interest opposed to the general interest of the creditors in the insolvent estate, nor any person declared to be incapable of being elected by virtue of the provisions in the next succeeding section contained.

Acts of assignee entitling the Court to set election aside, and declare offender disqualified. 69. If any person elected as assignee shall be proved to the satisfaction of the District Court to have, either directly or indirectly, given or promised to give to any creditor of the insolvent any species of valuable consideration whatsoever, in order to obtain the vote of such creditor at the choice of assignees, or to have agreed to secure and make good to any creditor some certain sum or dividend in discharge or diminution of his debt, upon condition or in order that such creditor should give his vote to such assignee, or to have offered or agreed in case any creditor of the insolvent should consent to vote for such assignee, to abstain from opening up or investigating some previous transactions between such creditor and the insolvent which were, or were supposed to be, of questionable validity, or to have contrived or been privy to any plan or arrangement by which debts or securities really belonging to some one or more persons have been divided amongst a greater number of persons for the purpose merely of increasing the number of votes at

the election for assignees and thereby influencing the same, or to have undertaken to share with any creditor of the insolvent, in return for his vote, the commission or remuneration to be awarded to him as such assignee, the Court shall declare such assignee to have forfeited the office of such assignee in regard to the insolvent estate for which he shall have been elected, and to be incapable of being again elected thereto; and it shall be lawful for such Court, if it should so think fit, to further declare that the person so offending shall be incapable of being elected an assignee under the provisions of this Ordinance for and during his natural life, or for such period as such Court shall determine and adjudge; and any person interested in the due administration of the insolvent estate may apply by motion to such Court to declare any such assignee to have forfeited his office by reason of any such misconduct as aforesaid; and as often as a vacancy in the office of assignee shall be created by any such forfeiture the Court declaring the same shall order a new assignee to be chosen by the creditors, and the same proceedings shall be had thereon as on the original election of assignees.

Imp. §§ 86, 87, 91.

Personal estate to vest in assignees. 70. When any person shall have been adjudged an insolvent all his personal estate and effects, present and future, wheresoever the same may be found or known, and all property which he may purchase, or which may revert, descend, be devised or bequeathed, or come to him before he shall have obtained his certificate, and all debts due to or to be due to him, wheresoever the same may be found or known, and the property, right, and interest in such debts, shall become absolutely vested in the assignees for the time being, for the benefit of the creditors of the insolvent, by virtue of their appointment; and after such appointment neither the insolvent nor any person claiming through or under him shall have power to recover the same, nor to make any release or discharge thereof; but such assignees shall have like remedy to recover the same in their own names as the insolvent himself might have had if he had not been adjudged insolvent.

Imp. § 44. The assignee in insolvency of the Ceylon partner may wind up the affairs of the partnership, and recover debts due the firm in Ceylon Courts. The rights of the executor of the deceased English partner are subordinate to those of the assignee. — *Macindoe v. Sanmugam*, (1897), 1 Tamb. 52.

Real estate to vest in assignees. 71. When any person shall have been adjudged an insolvent, all lands in this Colony to which any insolvent is entitled, and all interests to which such insolvent is entitled in any such lands, and of which he might according to the laws of this Colony have disposed, and all such lands in this Colony as he shall purchase, or as shall descend, be devised, revert to, or come to such insolvent before he shall have obtained his certificate, and all deeds, papers, and writings respecting the same, shall become absolutely vested in the assignees for the time being, for the benefit of the creditors of the insolvent, by virtue of their appointment, without any deed of conveyance for that purpose, and as often as any such assignee shall die or be lawfully removed or displaced, and a new assignee shall be duly appointed, such of the aforesaid real estate as shall remain unsold or unconveyed shall, by virtue of such appointment, vest in the new assignee, either alone or jointly with the existing assignees, as the case may require, without any conveyance for that purpose.

Imp. § 44. All interests in immoveables (here a life interest in a house) vest in the assignee. — *Loos v. Sekana Lebbe*, (1883), *Wendt*, 304.

Insolvent not liable to rents or covenants in conveyances, leases, etc., if assignees accept the same; how if assignees decline; how assignees compelled to elect. 72. If the assignees of the estate and effects of any insolvent having or being entitled to any land under a conveyance to him, or under an agreement for any such conveyance, subject to any perpetual yearly rent reserved by such conveyance or agreement, or having or being entitled to any lease or agreement for a lease, shall elect to take such land, or the benefit of such conveyance or agreement, or such lease or agreement for a lease, as the case may be, the insolvent shall not be liable to pay any rent accruing after the filing of the petition for sequestration of his estate against him, or to be sued in respect of any subsequent non-observance or non-performance of the conditions, covenants, or agreements in any such conveyance or agreement, or lease or agreement for a lease; and if the assignees shall decline to take such land, or the benefit of such conveyance or agreement or lease or agreement for

lease, the insolvent shall not be liable if, within fourteen days after he shall have had notice that the assignees have declined, he shall deliver up such conveyance or agreement or lease or agreement for lease to the person then entitled to the rent, or having so agreed to lease, as the case may be; and if the assignees shall not (upon being thereto required) elect whether they will accept or decline such land or conveyance or agreement for conveyance, or such lease or agreement for a lease, any person entitled to such rent, or having so conveyed or agreed to convey, or leased or agreed to lease, or any person claiming under him, shall be entitled to apply to the District Court, and the District Court may order them to elect and deliver up such conveyance or agreement for conveyance or lease, or agreement for lease, in case they shall decline the same, and the possession of the premises, or may make such other order therein as it shall think fit.

Imp. § 55.

Assignees how compelled to elect whether they will abide by or decline agreement for the purchase of land. 73. If any insolvent shall have entered into any agreement for the purchase of any estate or interest in land, the vendor thereof, or any person claiming under him, if the assignees shall not (upon being thereto required) elect whether they will abide by and execute such agreement or abandon the same, may apply to the District Court, and the Court may thereupon order them to deliver up the agreement and the possession of the premises to the vendor or person claiming under him, or may make such other order therein as such Court shall think fit.

Imp. § 55.

Assignees may execute power vested in the insolvent. 74. All powers vested in any insolvent which he might legally execute for his own benefit may be executed by the assignees for the benefit of the creditors in such manner as the insolvent might have executed the same.

Imp. § 50.

Court may order insolvent to join in conveyances. 75. It shall be lawful for the District Court, upon the application of the assignees or of any purchaser from them of any part of the insolvent's estate, if such insolvent shall not try the validity of the adjudication, or if there shall have been a judgment establishing its validity, to order the insolvent to join in any conveyance of such estate or any part thereof; and if he shall not execute any such conveyance within the time directed by the order, such insolvent and all persons claiming under him shall be estopped from objecting to the validity of such conveyance, and all estate, right, or title which such insolvent had therein shall be as effectually barred by such order as if such conveyance had been executed by him.

Imp. § 24 (2).

Property mortgaged or pledged may be redeemed by the assignees. 76. If any insolvent shall have granted, conveyed, assured, or pledged any real or personal estate, or deposited any deeds, such grant, conveyance, assurance, pledge, or deposit being upon condition or power of redemption at a future day by payment of money or otherwise, the assignees may, before the time of the performance of such condition, make tender or payment of money or other performance, according to such condition, as fully as the insolvent might have done, and after such tender, payment, or performance such real or personal estate may be sold and disposed of for the benefit of the creditors.

Property of an insolvent that has been specially mortgaged does not vest in the assignee, but is liable to sale in execution in satisfaction of the debt secured by it. The rights of the assignee in respect of such property are the same as those of the insolvent. — *In re Allsup*, (1875), *Ram.* 1872, 135.

Assignees may appoint the insolvent to manage the estate. 77. In every case the assignees may, with the approbation of the District Court, appoint the insolvent himself to superintend the management of the estate, or to carry on the trade of such insolvent for behoof of the creditors, and in all or any other respects they may think fit to aid them in administering the insolvent's estate and effects, in such manner and on such terms as they may think best for the benefit of the persons interested in the estate.

Imp. § 64 (1).

Assignees to be subject to orders of the Court. 78. The assignees shall be subject to the orders of the District Court in their conduct as assignees; and it shall be lawful for the Court at all times to summon the assignees, and require them to produce

all books, papers, deeds, writings, and other documents relating to the insolvency in their possession, and to direct them to pay and deliver over to the Court all moneys, books, papers, deeds, writings, and other documents which may have come to their possession or custody as such assignees.

Imp. § 91. See also § 113, *infra*. The assignee is not responsible for debts that can not be recovered, unless, *semble*, the assignee's failure to recover the debt is attributable to his own fault. — In re Wikramanayake, (1900), 5 N. L. R. 175.

Where one of a firm is insolvent, the Court may authorize action in name of the assignees and of the other partner; partner to have notice, and may show cause. 79. If any person adjudged insolvent shall at the time of the adjudication of insolvency be a member of a firm, it shall be lawful for the District Court to authorize the assignees, upon their application, to commence or prosecute any action in the name of such assignees and of the remaining partner against any debtor of the partnership, and such judgment, decree, or order may be obtained therein as if such action had been instituted with the consent of such partner, and if such partner shall execute any release of the debt or demand for which such action is instituted such release shall be void; provided that every such partner shall have notice given him of such application, and be at liberty to show cause against it, and if no benefit be claimed by him by virtue of the said proceedings shall be indemnified against the payment of any costs in respect of such action in such manner as the Court may direct; and it shall be lawful for such Court, upon the application of such partner, to direct that he may receive so much of the proceeds of such action as such Court shall direct.

Imp. § 113.

As to sale of estates by assignees, conditions of sale, etc. 80. The assignees shall, subject to the directions of the creditors given at any meeting of such creditors, forthwith proceed to make sale of all the property belonging to the insolvent, real and personal, giving due notice thereof in the *Government Gazette*, and also such other notice as they shall think fit; provided that from the sale of the said personal property shall be excepted, until the creditors shall determine thereon, the wearing apparel, bedding, household furniture, and tools of trade of the insolvent and his family; and provided that the sale of all real property shall take place in such manner and under such conditions as shall be determined on by the greater part in number and value of the creditors present at any meeting duly summoned; provided, however, that such conditions shall be subject to the approval or disapproval of the District Court on the application of any person interested therein.

Imp. § 44. Where notice of an original meeting was duly advertised, notice of an adjourned meeting need not be published in the *Gazette*. — (1871), Van. 154. The assignee must not purchase property at an auction sale of the insolvent's property either for himself or for others. — In re Fisher, Ex parte Glenney, (1880), 3 S. C. C. 112.

As to wearing apparel, tools, etc., of insolvent. 81. It shall be lawful for the assignees, with the consent of the greater part in number and value of the creditors who shall have proved their debts present at any meeting of creditors whereof, and of the purpose of which ten days' notice shall have been given in the *Government Gazette*, to permit the insolvent to retain, for his own use, the whole or such part of his wearing apparel, bedding, household furniture, and tools of trade excepted, from the sale of his personal property, as the said creditors shall agree to allow to the said insolvent; provided that every such permission shall be subject to the approval or disapproval of the District Court on the application of any person interested in the due administration of the estate.

Imp. § 44.

Assignees, with leave of the Court, may bring or defend actions; may compound debts; and refer disputes to arbitrators. 82. The assignees, with the leave of the District Court first obtained, upon application to such Court, but not otherwise, may commence, prosecute, or defend any action which the insolvent might have commenced and prosecuted or defended, and in such case the costs to which they may be put in respect of such action shall be allowed out of the proceeds of the estate and effects of the insolvent; and with like leave of the Court, after notice to the creditors, and subject to such condition, if any, as to obtaining the consent of creditors, or any proportion of them as the Court shall think fit to direct, the assignees may take such reasonable part of any debt due to the insolvent's estate, as may by composition be obtained, or may give time or take security for the payment of such debts, and may, with like leave of the Court, submit to arbitration

any difference or dispute between the assignees and any other person for or on account or by reason of anything relating to the estate and effects of the insolvent.

Imp. § 56. The right of an assignee to sue depends on leave of the Court being previously obtained for the purpose. Such fact must be specially set forth in the pleadings. An action brought without leave must fail, even though the defendant made no objection by way of plea or demurrer. — *Phebus v. Fernando*, (1887), 1 C. L. R. 26. Although the Ordinance does not specifically confer on the District Court power to issue injunctions in the matter of insolvency, nevertheless, *semble*, an injunction may issue in appropriate cases. — *Saibo Meera Markar v. O. L. M. Samsy Lebbe Markar*, (1882), *Wendt*, 241. The bankruptcy or insolvency of a plaintiff in any action which his assignee might maintain for the benefit of his creditors does not bar the action, unless such assignee declines to continue the action and to give security for the costs thereof, within such time as the Court may order. If the assignee neglects or refuses to continue the action and to give such security within the time so ordered, the defendant may apply for the dismissal of the action on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the action and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate. — Ord. No. 2 of 1889, §§400, 401.

Reference to arbitration may be made a rule of court. 83. If the assignees shall agree in manner aforesaid to refer any matter in dispute to arbitration, such agreement of reference may be made a rule of court, whether such agreement contain a clause to that effect or not.

If petition or adjudication be annulled, etc., persons from whom the assignees have recovered, or who have bona fide paid the assignees, etc., discharged from claims by the insolvent. 84. All persons from whom the assignees shall have recovered any real or personal estate, either by judgment or decree, are hereby discharged, in case the petition for sequestration or the adjudication of insolvency thereunder be afterwards annulled or dismissed, from all demands which may thereafter be made in respect of the same by the person against whom such adjudication was made, and all persons claiming under him; and all persons who shall, without action, bona fide deliver up possession of any real or personal estate to the assignees, or pay any debt, claimed by them, are hereby discharged from all claim of any such person as aforesaid in respect of the same or any person claiming under him: Provided the person so delivering up any real or personal estate or paying any debt, shall not have had notice of an action or other proceeding to dispute or annul the petition for sequestration or adjudication thereunder, and such action or other proceeding shall not have been commenced and prosecuted within the time and in manner allowed by this Ordinance.

Assignee indebted to the estate becoming insolvent, his future property liable. 85. If any assignee indebted to the estate of which he is such assignee in respect of money, being part of the estate of the insolvent retained or employed by him, become insolvent and obtain his certificate, it shall have the effect only of freeing his person from arrest and imprisonment, but his future effects (his tools of trade, necessary household goods, and the necessary wearing apparel of himself, his wife and children excepted) shall remain liable for so much of his debt to the estate of which he was assignee as shall not be paid by dividends under his insolvency, and for interest at the rate of nine per cent, per annum on the whole debt.

Suits not to abate by death or removal of assignees. 86. Whenever any assignee shall die or be removed, or a new assignee shall be chosen, no action shall be thereby abated, but the Court in which any action is depending may, upon the suggestion of such death or removal and new choice, allow the name of the surviving or new assignee to be substituted in the place of the former, and such action shall be prosecuted in the name or names of the said surviving or new assignee or assignees in the same manner as if he had originally commenced the same.

In action against a debtor to the estate, in what case he may pay money into Court. 87. If the assignees commence any action for any money due to the insolvent's estate before the time allowed for the insolvent to dispute the insolvency shall have elapsed, any defendant in any such action shall be entitled, after notice given to the assignees, to pay the same or any part thereof into the Court in which such action is brought, and all proceedings with respect to the money so paid into Court shall thereupon be stayed until such time shall have elapsed, and if within that time the insolvent shall not have commenced such action or other proceeding as allowed by this Ordinance, and prosecuted the same with due diligence, the money shall be paid out of Court to the assignees, but otherwise shall abide the event of such action or other proceeding, and upon such event shall be paid out

of Court, either to the assignees or the person adjudged insolvent, as the Court shall direct; and after such payment of money so made into Court it shall not be lawful for the person so adjudged insolvent to proceed against the defendant for recovery of the same money.

Limitation of actions. 88. Every action brought against any person for anything done in pursuance of this Ordinance shall be commenced within three months next after the act committed; and if there be a judgment for the defendant, or if the plaintiff shall be nonsuited or discontinue his action after appearance thereto, the defendant shall receive such indemnity as to all costs, charges, and expenses incurred in and about any such action as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of costs by such officer. And with respect to the last examination:

The insolvent to prepare balance sheet and accounts, etc. 89. The last examination of the insolvent shall be at the second public sitting of the Court for the insolvent to surrender and conform, as advertised in the *Gazette*, and the insolvent shall prepare such balance sheet and accounts, and in such form, as the Court shall direct, and shall subscribe such balance sheet and accounts, and file the same in Court, and deliver a copy thereof to the assignees ten days at least before the day appointed for the last examination, or the adjournment day thereof for that purpose; and such balance sheet and accounts, before such last examination, may be amended from time to time as occasion shall require and such Court shall direct; and the insolvent shall make oath of the truth of such balance sheet and accounts whenever he shall be duly required by the Court so to do; and the last examination of the insolvent shall in no case be passed unless his balance sheet shall have been duly filed as aforesaid; and the Court may on the application of the assignees or of the insolvent make such allowance out of the estate of the insolvent for the preparation of such balance sheet and accounts, and to such person, as the Court shall think fit, in any case in which it shall be made to appear to the satisfaction of the Court, from the nature of the accounts or other good cause, that the insolvent required assistance in that behalf.

Imp. § 24. Creditors are entitled to have a proper balance sheet filed and perfected ten days before the final examination. The balance sheet originally filed is not sufficient, (1871), Van. 153. See also *In re Thomson, Ex parte Smith*, (1872), Ram. 1872, 29; *Mammie v. Coorty Allie*, (1872), 6 S. C. C. 60.

Insolvents apprehended by warrant. 90. If any insolvent apprehended by any warrant of the Court shall, within the time allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered.

Court may adjourn last examination sine die. 91. It shall be lawful for the Court, at the time appointed for the last examination of the insolvent, or at any enlargement or adjournment thereof, to adjourn such examination sine die; and in such case the insolvent shall be free from arrest or imprisonment for such time, if any, as such Court shall from time to time, by endorsement on the summons of the insolvent, think fit to appoint.

If insolvent in custody, Court may appoint a person to attend him with books, papers, etc., to enable him to prepare a balance sheet. 92. Whenever any insolvent is in prison or in custody under any process, attachment, execution, commitment, or sentence, the Court may appoint a person to attend him from time to time to produce to him his books, papers, and writings, in order that he may prepare his balance sheet, and show the particulars of his estate and effects, previous to his last examination and discovery thereof. And with respect to the proof of debts and payments in full:

When and how debts may be proved; creditor may be examined upon oath. 93. At the sittings appointed by the Court under the 30th section of this Ordinance, and at every adjournment thereof, and at every other sitting held for proof of debts, and whereof and of the purport whereof ten days' notice shall have been given in the *Gazette* of this Colony, every creditor of the insolvent may prove his debt by his own oath or affidavit; and all bodies politic and public companies incorporated or authorized to sue or bring actions, either by Charter, Act of Parliament, or Ordinance, may prove by an agent, provided such agent shall in his deposition swear that he is such agent, and that he is authorized to make such proof: Provided always that if it shall appear to the Court that any clerk, agent, or other

person is more fully cognizant of the nature of the debt sought to be proved than the creditor is, the said Court shall allow such clerk, agent, or other person to prove such debt by his oath or affidavit; and provided that any creditor who is out of the Colony may, in case he have no known agent in the Colony capable of proving the alleged debt, make the necessary affidavit before some person duly qualified to administer oaths in the place where he resides, such person being certified to be so qualified by some sufficient authority in that behalf: Provided also that it shall be lawful for the Court to examine upon oath, either by word of mouth or by interrogatories in writing, every person claiming to prove a debt, or to require such further proof, and to examine such other persons in relation thereto, as such Court shall think fit.

Imp. § 37. See also § 110. No appeal lies by the assignee against the order of the District Court admitting proof of a debt. The proper procedure is a motion under § 110 to expunge the proof. — *In re de Zilva*, (1895), 1 Br. 302. But, *semble*, where the District Judge refused to permit the assignee to cross-examine the creditor, an order admitting the claim is subject to appeal, provided that the admission of the debt tended to affect the surplus or the allowance of the insolvent. — *In re Andris*, (1900), 2 Br. 31; 4 N. L. R. 72.

Bona fide creditors for debts contracted after an act of insolvency may prove.

94. Every person with whom any insolvent shall have really and bona fide contracted any debt or demand before the filing of the petition for sequestration of his estate shall, notwithstanding any prior act of insolvency committed by such insolvent, be admitted to prove the same as if no such act of insolvency had been committed; provided such person had not at the time the same was contracted notice of any act of insolvency, by such insolvent committed.

Amount of taxes. 95. The Court, out of the estate and effects of the insolvent, shall order payment of all taxes due by the insolvent at the time of his insolvency up to the end of the current quarter.

Imp. 51 & 52 Vic. c. 62, § 1.

If insolvent an officer of friendly society, Court to order payment of debt to them before any other debts. 96. If any person already appointed or employed, or who may be hereafter appointed to or employed, in any office in the Ceylon Savings Bank, or in the Loan Board, or in any friendly society duly incorporated, and being intrusted with the keeping of the accounts, or having in his hands or possession by virtue of his office or employment any moneys or effects belonging to such Savings Bank, Loan Board, or society, or any deeds or securities relating to the same, shall become insolvent, the Court shall, upon application made by the order of any such society, or any committee thereof, or the major part of them assembled at any meeting thereof, order payment and delivery over to be made to such society, or to such person as such society or committee may appoint, of all moneys and other things belonging to such society, and shall also order payment out of the estate and effects of the insolvent of all sums of money remaining due which the insolvent received by virtue of his said office or employment, before any other of his debts are paid or satisfied.

Three months' wages or salary to clerks or servants. 97. When any insolvent shall have been indebted at the time of filing the petition for the sequestration of his estate to any servant, clerk, or superintendent, labourer, cooly, or workman of such insolvent, in respect of the wages or salary of such servant, clerk, or superintendent, labourer, cooly, or workman, it shall be lawful for the Court, upon proof thereof, to order so much as shall be so due, not exceeding three months' wages or salary, and not exceeding thirty pounds, to be paid to such servant, clerk, or superintendent, labourer, cooly, or workman, out of the estate of such insolvent, and such servant, clerk, or superintendent, labourer, cooly, or workman shall be at liberty to prove for any sum exceeding such amount.

Imp. 51 & 52 Vic. c. 62, § 1. The preference here referred to is only over ordinary creditors, not over those having an hypothecary or legal preference. — (1877), *Ram*, 1877, 47.

Apprentices discharged from their indentures; sum to be paid in respect of apprentice fees. 98. When any person shall have been an apprentice to an insolvent at the time of the filing of a petition for sequestration of his estate, the filing of such petition shall be and inure as a complete discharge of the indenture whereby such apprentice was bound; and if any sum shall have been really and bona fide paid by or on the behalf of such apprentice to the insolvent as an apprentice fee, it shall be lawful for the Court, upon proof thereof, to order any sum to be paid out of the estate of the said insolvent to or for the use of such apprentice which

such Court shall think reasonable, regard being had, in estimating such sum, to the amount of the sum so paid by or on behalf of such apprentice, and to the time during which such apprentice shall have resided with the insolvent previous to the filing of such petition.

Imp. § 41.

Mutual debts and credits may be set off. 99. Where there has been mutual credit given by the insolvent and any other person, or where there are mutual debts between the insolvent and any other person, the Court shall state the account between them, and one debt or demand may be set against another, notwithstanding any prior act of insolvency committed by such insolvent before the credit given to or the debt contracted by him; and what shall appear due on either side on the balance of such account, and no more, shall be claimed or paid on either side respectively; and every debt or demand hereby made provable against the estate of the insolvent may also be set off in manner aforesaid against such estate; provided that the person claiming the benefit of such set-off had not, when such credit was given, notice of an act of insolvency by such insolvent committed.

Imp. § 38.

Debts not payable at the time of the insolvency may be proved. 100. Any person who shall have given credit to the insolvent, upon valuable consideration, for any money or other matter or thing whatsoever which shall not have become payable when such insolvent committed an act of insolvency, and whether such credit shall have been given upon any bill, bond, note, or other negotiable security or not, shall be entitled to prove such debt, bill, bond, note, or other security as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest for what he shall so receive, at the rate of nine pounds per centum per annum, to be computed from the declaration of a dividend to the time such debt would have become payable according to the terms upon which it was contracted.

Imp. § 37.

Proof of sureties. 101. Any person who at the time of filing a petition for sequestration of any estate as insolvent shall be surety or liable for any debt of the insolvent, or bail for the insolvent, if he shall have paid the debt or any part thereof in discharge of the whole debt (although he may have paid the same after the filing of the petition for sequestration of the estate), if the creditor shall have proved his debt under the insolvency, shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the insolvency which such creditor possessed or would be entitled to in respect of such proof; or if the creditor shall not have proved, such surety or person liable or bail shall be entitled to prove his demand in respect of such payment as a debt under the insolvency, not disturbing the former dividends, and may receive dividends with the other creditors, although he may have become surety, liable, or bail as aforesaid after an act of insolvency committed by the insolvent; provided that such person had not, when he became such surety, or bail, or so liable as aforesaid, notice of any act of insolvency by such insolvent committed.

Imp. § 37.

Claim and proof on bottomry or respondentia bonds, and policy of insurance. 102. The obligee in any bottomry or respondentia bond and the assured in any policy of insurance made upon good and valuable consideration, shall be admitted to claim, and, after the loss or contingency shall have happened, to prove his debt or demand in respect thereof, and receive dividends with the other creditors as if the loss or contingency had happened before the filing of the petition for sequestration of the estate of such obligor or insurer; and the person effecting any policy of insurance upon ships or goods with any person (as a subscriber or underwriter) having become or becoming insolvent, shall be entitled to prove any loss to which such insolvent shall be liable in respect of such subscription, although the person so effecting such policy was not beneficially interested in such ships or goods, in case the person so interested is not within this Colony.

Imp. § 37.

Proof by annuity creditor. 103. Any annuity creditor of any insolvent, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the time of the filing the petition for sequestration, shall be entitled to prove for the value of such annuity, which value the Court shall

ascertain, regard being had to the original price given for such annuity, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the date of the filing of such petition.

Imp. § 37.

Proof by sureties for payment of annuities; proviso. 104. It shall not be lawful for any person entitled to any annuity granted by any insolvent to sue any person who may be collateral surety for the payment of such annuity until such annuitant shall have proved against such insolvent's estate for the value of such annuity, and for the arrears thereof; and if such surety after such proof pay the amount proved, he shall be thereby discharged from all claims in respect of such annuity; and if such surety shall not (before any payment of the annuity subsequent to the filing the petition for sequestration shall have become due) pay the sum so proved, he may be sued for the accruing payments of such annuity until such surety shall have paid or satisfied the amount so proved, with interest thereon, from the time of notice of such proof and of the amount thereof being given to such surety; and after such payment or satisfaction such surety shall stand in the place of such annuitant in respect of such proof to the amount so paid or satisfied by such surety; and the certificate of the insolvent shall be a discharge to him for all claims of such annuitant or of such surety in respect of such annuity, provided that such surety shall be entitled to credit in account with such annuitant for any dividends received by such annuitant under the insolvency before such surety shall have fully paid or satisfied the amount so proved.

Imp. § 37.

Proof for contingent debt. 105. If any insolvent shall before the filing of a petition for sequestration of his estate have contracted any debt payable upon a contingency which shall not have happened before the filing of such petition, the person with whom such debt has been contracted may, if he think fit, apply to the Court to set a value upon such debt, and the Court is hereby required to ascertain the value thereof and to admit such person to prove the amount so ascertained and to receive dividends thereon; or if such value shall not be ascertained before the contingency shall have happened, then such person may, after such contingency shall have happened, prove in respect of such debt and receive dividends with the other creditors, not disturbing any former dividends; provided such person had not when such debt was contracted notice of any act of insolvency by such insolvent committed.

Claim and proof for contingent liability; proviso. 106. If any person who shall be adjudged insolvent after the commencement of this Ordinance shall have contracted before the filing of a petition for sequestration of his estate a liability to pay money upon a contingency which shall not have happened, and the demand in respect whereof shall not have been ascertained before the filing of such petition, in every such case, if such liability be not provable under any other provision of this Ordinance, the person with whom such liability has been contracted shall be admitted to claim for such sum as the Court shall think fit; and after the contingency shall have happened, and the demand in respect of such liability shall have been ascertained, he shall be admitted to prove such demand and receive dividends with the other creditors, and, so far as is practicable, as if the contingency had happened and the demands had been ascertained before the filing of such petition, but not disturbing former dividends; provided such person had not at the time such liability was contracted notice of any act of insolvency by such insolvent committed; provided also, that where any such claim shall not have, either in whole or in part, been converted into a proof within six months after the filing of such petition, it may, upon the application of the assignees at any time after the expiration of such time, and if the Court shall think fit, be expunged either in whole or in part from the proceedings.

Imp. § 37 (3).

Proof for interest. 107. Upon all debts or sums certain, payable at a certain time or otherwise, whereupon interest is not reserved or agreed for, and which shall be overdue at the filing of the petition for sequestration and provable thereunder, the creditor shall be entitled to prove for interest to be calculated at a rate not exceeding nine pounds per centum per annum, up to the date of the filing of such petition from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time

or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment.

There is no right to interest from the date of the insolvency to the date of the proof. — (1869), Van. 30.

Plaintiff or defendant obtaining judgment, etc., entitled to prove for costs, etc.

108. If any plaintiff in any action or petitioner for the sequestration of the estate of any person as insolvent shall have obtained any judgment, decree, or order against any person who shall thereafter become insolvent for any debt or demand in respect of which such plaintiff or petitioner shall prove under the insolvency, such plaintiff or petitioner shall also be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the insolvency; and if any defendant shall have obtained any judgment, decree, or order in any such action or in the matter of any such petition against any person who shall thereafter become insolvent, such defendant shall be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the insolvency.

Imp. § 37.

Proving debt to be an election not to proceed against the insolvent's action; proviso. 109. No creditor who has brought any action against any insolvent in respect of a demand prior to the filing of a petition for sequestration, or which might have been proved as a debt under the insolvency, shall prove a debt under such insolvency or have any claim entered upon the proceedings, without relinquishing such action; and the proving or claiming a debt under a petition for sequestration by any creditor shall be deemed to be an election by such creditor to take the benefit of such petition with respect to the debt so proved or claimed: Provided that such creditor shall not be liable to the payment to such insolvent or his assignees of the cost of such action so relinquished by him, and that where any such creditor shall have brought any action against such insolvent jointly with any other person, his relinquishing such action against the insolvent shall not affect such action against such other person; provided also, that any creditor who shall have so proved or claimed, if the petition for sequestration be afterwards dismissed, may proceed in the action as if he had not so proved or claimed.

Proving a debt, the subject of a suit, is a relinquishment of that suit. — *In re Chamberlin, Ex parte Anderson*, (1883), *Wendt*, 318.

Complaint of debts being proved which are not due; investigation at whose instance, and how. 110. Whenever it shall appear to the assignees, or to two or more creditors who have each proved debts to the amount of twenty pounds or upwards, that any debt proved is not justly due, either in whole or in part, such assignees or creditors may make representation thereof to the Court; and it shall be lawful for the Court to summon and examine upon oath any person who shall have so proved, together with any person whose evidence may appear to the Court to be material, either in support of or in opposition to any such debt; and if the Court, upon the evidence given on both sides, or (if the person who shall have proved shall not attend to be examined, having been first duly summoned, or notice having been left at his last place of abode) upon the evidence adduced by such assignees or creditors, shall be of opinion that such debt is not due, either wholly or in part, the Court shall be at liberty to expunge the same, either wholly or in part, from the proceedings: Provided that such assignees or creditors requiring such investigation shall, before it is instituted, sign an undertaking, to be filed with the proceedings, to pay such costs as the Court shall adjudge to the creditor who has proved such debt, such costs to be recovered by application to the Court, upon which an order for payment thereof may be made by the Court.

See note to § 93, *supra*.

Creditor having security not to receive more than other creditors; proviso.

111. No creditor having security for his debt, or having made any attachment of the goods and effects of the insolvent, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution served and levied by seizure and sale upon or any mortgage of or lien upon any part of the property of such insolvent before the date of the filing of a petition for sequestration of his estate: Provided always that nothing herein contained shall be deemed to give validity to any power of attorney to confess judgment or consent to a judg-

ment declared to be null and void by any provisions of this Ordinance, nor to give validity to any judgment entered up under or by virtue of any such power of attorney or consent, or to any execution executed or levied under or by virtue of any such power of attorney or consent.

Imp. § 37. All creditors are entitled to participate in the proceeds of the execution. — *Brown v. Fernando*, (1888), 8 S. C. C. 162. Where a mortgagee has obtained a judgment on his mortgage declaring the land specially bound and executable, he may proceed to execution even after an adjudication of insolvency and the appointment of an assignee. — *Carson v. Cameron*, (1883), 5 S. C. C. 149.

Accounts of assignees. 112. The assignees shall keep an account wherein they shall enter all property of the insolvent received by them and all payments made by them on account of the insolvent's estate, which account every creditor who shall have proved may inspect at all reasonable times; and it shall and may be lawful for the Court, whenever it shall think fit, to summon the assignees to produce the said book, and the said Court may examine and inspect the same or appoint some qualified person so to do. And with respect to the audit, and to the money belonging to the insolvent estate:

Imp. § 80.

Audit. 113. The District Court shall, whenever it shall think fit, appoint a public sitting to be holden after the sitting appointed for the last examination of the insolvent (of which public sitting and of the purport whereof ten days' notice shall be given in the *Gazette* of this Colony) to audit the accounts of the assignees; and at such sitting the assignees shall deliver upon oath a true statement in writing of all money received by them respectively, and when, and on what account, and how the same has been employed; and the Court shall examine such statement and compare the receipts with the payments, and ascertain what balances have been from time to time in the hands of such assignees respectively; and it shall be lawful for the Court to examine the assignees upon oath touching the truth of such accounts, and to make therein all just allowances.

Imp. § 78. See note to § 78, *supra*.

Remuneration to assignees. 114. The District Court may order and allow to be paid out of the assets of any insolvent estate to the assignees appointed by the Court or chosen by the creditors, as a remuneration for their services, such sum as shall, upon consideration of the amount of the said estate and the nature of the duties performed by such assignees, appear to be just and reasonable.

Imp. § 72.

Creditors to choose a bank with which assignees shall open an account and lodge the money of the estate. 115. It shall be lawful for and shall be the duty of the creditors of any insolvent estate, at the meeting held for the choice of assignees, immediately after such election, in case such election shall take place at such meeting, and in case such election shall not then take place, then immediately after the votes of the said creditors in regard to such election shall have been given, to nominate and appoint some bank within this Colony, with which bank it shall be the duty of the assignees to open an account, and in case of a difference of opinion amongst the said creditors assembled at such meeting, the greater part in value of the said creditors shall determine upon the bank to be so nominated and appointed as aforesaid, and from and after any such nomination and appointment of any such bank the assignees of such insolvent estate, whether chosen by the creditors or provisionally appointed, shall, as soon as they shall receive any sum of money exceeding ten pounds belonging to such estate, open an account with such bank in the name of the insolvent estate, and such sum and every other sum exceeding ten pounds so received by them shall with all convenient speed be paid into such bank, to be placed to the credit of such account, and all cheques or orders for the payment of any such money out of the said bank shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the assignees, or by one of them for himself and co-assignees; provided that in case the creditors of any insolvent estate shall neglect to nominate any such bank it shall be lawful for the assignees to open an account with and pay all such moneys into any such bank in this Colony as they shall select: And provided that every provisional assignee appointed under this Ordinance before the meeting of creditors for the choice of assignees shall, pending such meeting, open an account with and pay all such moneys into any such bank in this Colony as he shall select;

and provided that all assignees, whether provisional or elected, shall in regard to the bank with which such account shall be kept, and such moneys lodged, pursue such directions as they shall from time to time receive from any general meeting of the creditors of the insolvent estate: Provided that if there shall be no bank at the place where the assignees reside, any sum of money received by them exceeding ten pounds belonging to such estate shall forthwith be paid into the District Court.

Imp. §§ 74, 75.

Penalty upon assignee retaining or employing money belonging to the estate.

116. Any assignee who shall retain in his hands, or knowingly permit any co-assignee so to retain, any sum of money exceeding ten pounds sterling part of any insolvent estate longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum, or cause it to be paid, into some such bank or into the District Court as aforesaid, and who shall not have any just and lawful cause for so retaining the same, or shall employ for his own benefit, or knowingly permit any co-assignee so to employ, any sum of money part of any insolvent estate, shall forfeit and pay, for the benefit of the said estate, double the amount of the sum so retained or employed; and the said sum so forfeited shall be deducted out of any claim the said assignee may have against the said estate, and the surplus, if any, shall be recovered by action at the suit of any two or more creditors in any competent court. And with respect to the dividend:

Imp. § 78.

Method of making dividends; no dividend without previous audit. 117. The District Court shall, whenever it shall think fit, appoint a public sitting to be holden after the sitting appointed for the last examination of the insolvent, when there are assets wherewith a dividend may be made (of which public sitting and of the purport whereof twenty-one days' notice shall be given in the *Gazette* of this Colony), to make a dividend of the insolvent's estate, and shall at such sitting direct such part of the net produce of the insolvent's estate as it may think fit to be forthwith divided amongst such creditors as have proved debts under the insolvency in proportion to their respective debts, and shall make an order in writing under the hand of the District Judge for dividend accordingly, to be filed with the proceedings, which order shall contain an account of the amount of the debts proved, of the money to be divided, of how much in the pound is then ordered to be paid to the creditors, and of the money allowed by the Court to be retained, and of the reason for retaining the same; and the assignees, in pursuance of such order, shall forthwith make such dividend in manner directed by the rules at any time in force under this Ordinance relating to the mode of payment of dividends by the assignees, but no dividend shall be declared unless the accounts of the assignees shall have been first audited.

Imp. § 58. Where a dividend has been declared all creditors who have proved their claims are entitled to participate therein. The assignee has no power to discriminate between creditors in the payment of such dividends. — *In re de Kroes*, (1896), 2 L. N. R. 1. A creditor proving after a dividend has been declared and distributed is entitled to be put on a footing of equality with creditors who participated in previous dividends, provided that dividends already paid be not disturbed. — *In re Chamberlin, Ex parte Anderson*, (1883), *Wendt*, 318.

Final dividend within eighteen months, except where suit depending or estate standing out, etc., outstanding debts, etc., may be sold, and the purchaser may sue for them. 118. If the insolvent's estate shall not have been wholly divided upon the first dividend the Court shall, within eighteen months after the filing of the petition for sequestration of the estate, appoint a public sitting (whereof and of the purport whereof twenty-one days' notice shall be given in the *Gazette* of this Colony) to make a second dividend, when all the creditors who have not proved their debts may prove the same, and at such sitting, but after such an audit as is directed by this Ordinance, shall order the balance in hand to be forthwith divided among such of the creditors as shall have proved their debts; and such second dividend shall be final, unless any action be depending, or any part of the estate be standing out not sold or disposed of, or unless some other estate or effects of the insolvent shall afterwards come to the assignees, in which case they shall as soon as may be convert such estate and effects into money; and within two months after the same shall be so converted the same shall also be divided in manner aforesaid; and if at the expiration of two years from the filing of any pe-

tion for sequestration there shall remain any outstanding debts or other property due or belonging to the estate of the insolvent which can not in the opinion of the Court be collected and received without unreasonable or inconvenient delay, it shall be lawful for the assignees, under the direction of the Court, to sell and assign such debts and other property, and also the books of the insolvent relating to his trade, dealings, or estate, in such manner and subject to such conditions as shall be ordered by the Court; and any person to whom any of such debts shall be so sold or assigned may sue for the same in his own name as fully as the assignees of such insolvent might have done.

Imp. § 62.

Remedy for dividend. 119. No action for any dividend shall be brought against any assignee by any creditor who shall have proved under the insolvency; but if the assignees shall refuse to pay any such dividend the Court may order payment thereof, with interest for the time it shall have been withheld, and may also order the costs of the application, and such order shall have the effect of a judgment by the said Court. And with respect to the unclaimed dividends:

Imp. § 63.

Unclaimed dividends, etc., to be paid into the Treasury. 120. All unclaimed dividends, and also any undivided surplus of an insolvent's estate over and above the amount finally directed to be divided amongst the creditors of any insolvent, shall be paid into the Treasury, to be carried in the books of the Treasury to the account intituled "The Unclaimed Dividend Account," subject to the order of the District Court, acting in prosecution of any insolvency, for the payment thereof of any dividend due to any creditor.

How unclaimed dividends, etc., in the hands of assignees to be disposed of; proviso. 121. Subject to any rule at any time in force under this Ordinance relating to unclaimed dividends, if any assignee under any insolvency shall have, either in his own hands or at any bank, or otherwise subject to his order or disposition, or shall know that there is in the hands or subject to the order and disposition of himself and any co-assignees, or of either of them, any unclaimed dividend or any such undivided surplus as aforesaid, such assignee shall, within three months next after the expiration of one year from the time of the declaration and order of payment of such dividend, either pay the same to the creditor or the other person entitled to the same, or cause a certificate thereof to be filed in the District Court, containing a full and true account of the name of the creditor to whom such unclaimed dividend is due, and of the amount of such dividend, and shall in like manner as to any undivided surplus as aforesaid, within three months next after the expiration of one year after the final declaration of dividends, cause a certificate stating the full and true amount of such surplus to be filed in the District Court, and every certificate to be filed as aforesaid shall be signed by the assignees filing the same, and every assignee shall, within one year next after the filing of any such certificate as aforesaid, pay or cause to be paid into the Treasury, to be carried to the account intituled "The Unclaimed Dividend Account," the full amount of the unclaimed dividends mentioned in such certificate, or so much thereof as shall not have been then paid to the creditors or other persons entitled thereto, and also the full amount of such undivided surplus as aforesaid: Provided always that no certificate of any unclaimed dividend shall be filed until the expiration of one year after the declaration and order for payment of such dividends. And with respect to allowances to the insolvent:

Imp. § 162.

Allowance to insolvent for maintenance. 122. It shall be lawful for the District Court, if it think fit, from time to time to make such allowance to the insolvent out of his estate, until he shall have passed his last examination, as shall be necessary for the support of himself and his family: Provided always that no such allowance shall be made by the Court for any period after the adjournment of the last examination sine die.

Imp. § 64 (2).

If estate pay 20s in the pound, and interest, surplus to be paid to insolvent. 123. If the produce of the estate of any insolvent shall be sufficient to pay twenty shillings in the pound, and interest as hereinafter mentioned, and to leave a surplus, the Court may order such surplus to be paid to such insolvent, his executors, administrators, or assigns; and every such insolvent shall be entitled to recover the

remainder, if any, of the debts due to him; but such surplus shall not be paid until all the creditors who have proved shall have received the interest due upon their debts. And with respect to the certificate of conformity:

Imp. § 65.

Mode of obtaining certificate. 124. Forthwith after the insolvent shall have passed his last examination the District Court shall appoint a public sitting for the allowance of his certificate (whereof and of the purport whereof twenty-one days' notice shall be given in the *Gazette* of this Colony and to the assignees), and at such sitting the assignees or any of the creditors of such insolvent who shall have given to the secretary of the Court three clear days' notice in writing of his intention to oppose, may be heard against the allowance of such certificate, and the Court having regard to the conformity of the insolvent to this Ordinance, and to his conduct as a trader, or in relation to his estate, before as well as after his insolvency, and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate, and either find the insolvent entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto, as the justice of the case may require.

Imp. § 29; 53 & 54 Vic. c. 71, § 8. The Court may rely wholly on the balance sheet and the assignee's report. — In re Pitche Tamby, (1908), 3 A. C. 163; 11 N. L. R. 205. An order merely suspending the certificate for a certain period does not entitle the insolvent to a certificate as of course at the expiration of that period. — In re Bastian, Ex parte Bastian, (1880), 3 S. C. C. 112. A failure to keep proper books of account amounts to a concealment of the true state of the insolvent's affairs, and a certificate may be refused even though it appears that it is not the practice of merchants of the class to which the insolvent belongs to keep accounts. — In re Omer Lebbe Marikar, (1900), 1 Br. 85. See also (1871), Van. 151.

Form of it. 125. The certificate of conformity under this Ordinance shall be in writing under the hand of the District Judge, and shall certify that the insolvent has made a full discovery of his estate and effects and in all things conformed, and that so far as the Court can judge there does not appear any reason to question the truth or fulness of such discovery (and shall be in the form Q in the Schedule to this Ordinance annexed, or to the like effect); and notice of the allowance of such certificate and of the class thereof shall be advertised in the *Gazette* of this Colony in such manner as may be directed by the Court.

It discharges insolvent from all debts provable. 126. The certificate of conformity allowed under this Ordinance, subject to the provisions herein contained, shall discharge the insolvent from all debts due by him when he became insolvent, and from all claims and demands made provable under the insolvency: Provided always that no such certificate shall release or discharge any person who was a partner with such insolvent at the time of his insolvency, or was then jointly bound or had made any joint contract with such insolvent, or who was a surety for him.

Imp. § 30. It is irregular to arrest a person under a writ in execution of a decree for alimony. Sums due on alimony are not debts provable in insolvency. While it is in the discretion of the Court to order the release of a person under arrest either absolutely or conditionally, when the arrest is for non-payment of alimony an order refusing a release is erroneous. — In re de Silva, (1895), 2 N. L. R. 140.

Certificate not granted or void if insolvent has concealed or falsified books, etc. 127. No insolvent shall be entitled to a certificate of conformity under this Ordinance, and any such certificate if allowed shall be void, if such insolvent shall, after an act of insolvency, or in contemplation of insolvency, or with intent to defeat the object of this Ordinance, have parted with, concealed, destroyed, altered, mutilated, or falsified, or caused to be concealed, destroyed, altered, mutilated, or falsified, any of his books, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entry in any book of accounts or other document with intent to defraud his creditors, or shall have concealed any part of his property, or if any person having proved a false debt under the insolvency, such insolvent being privy thereto, or afterwards knowing the same, shall not have disclosed the same to his assignees within one month after such knowledge.

Contract or security to induce creditor to forbear opposition void. 128. Any contract or security made or given by any insolvent or other person unto or in trust for any creditor for securing the payment of any money due by such insolvent at his insolvency, as a consideration or with intent to persuade such creditor to forbear opposing, or to consent to the allowance of the insolvent's certificate,

or to forbear to petition for the recall of the same, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable.

Certificate may be recalled. 129. At any time within six months after any certificate of conformity shall have been allowed, and subject to such order as to deposit of costs as may be made by the Supreme Court, any creditor of the insolvent, or any assignee, may apply to the Supreme Court that such certificate may be recalled and delivered up to be cancelled; and the Supreme Court may, on good cause shown, order such certificate to be recalled and cancelled.

Imp. § 104. See notes to § 124, *supra*, and § 133, *infra*. This section was designed to give to the Supreme Court a special jurisdiction where there has been no appeal from the allowance of the certificate by the District Court. An application to recall a certificate should be made under § 133, and an order made thereunder by the District Court is subject to an appeal to the Supreme Court. — In *re Perera*, (1902), 3 Br. 71; 5 N. L. R. 291. A certificate of conformity recalled because of acts of the insolvent. — In *re Worms*, (1857), 3 Lor. 231.

Insolvent not liable upon any promise to pay debt discharged by certificate. 130. No insolvent after his certificate shall have been allowed shall be liable to pay or satisfy any debt, claim, or demand from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim, or demand upon any contract, promise, or agreement made after the filing of the petition for sequestration of his estate.

Imp. § 30.

Insolvent, having obtained his certificate, free from arrest; may plead his certificate; evidence under it; insolvent, if in execution, discharged. 131. Any insolvent who shall, after his certificate shall have been allowed, be arrested or have any action brought against him for any debt, claim, or demand provable under his insolvency, shall be discharged upon entering an appearance, and may plead in general that the cause of action accrued before he became insolvent, and may give this Ordinance and the special matter in evidence; and such insolvent's certificate shall be sufficient evidence of the insolvency, petition for sequestration, and other proceedings precedent to the obtaining such certificate; and if any such insolvent shall be taken in execution or detained in prison for such debt, claim, or demand, where judgment has been obtained before the allowance of his certificate, it shall be lawful for any Judge of the Court wherein judgment has been so obtained, on such insolvent's producing his certificate, to order any officer who shall have such insolvent in custody by virtue of such execution, to discharge such insolvent, and such officer shall be hereby indemnified for so doing.

Imp. § 30.

Appeal against allowance or refusal of certificate. 132. No such certificate shall be delivered to the insolvent until after the expiration of the time allowed for entering an appeal; and if an appeal be duly entered against the judgment of such Court for the allowance of the certificate, or for the refusal, the withholding, or the class of the certificate, and notice thereof be given to the Court in such manner as may by any general rule or order to be made in pursuance of this Ordinance be directed, the certificate shall be further kept by the Court and abide the judgment of the Supreme Court thereupon, and upon any appeal duly entered and prosecuted relating to the certificate or to the judgment of the Court as to any offence under this Ordinance charged against the insolvent, the Supreme Court shall have power to rescind or vary the order of the District Court, or to make such other order thereon as it may think fit; and upon an order for the allowance of any certificate by the Supreme Court, and whether with conditions or not, or after a suspension thereof by order of the Supreme Court or not, such certificate may be allowed and signed by the District Judge or by a Judge of the Supreme Court.

Imp. § 104. An order granting a certificate made by the District Court without having before it the report of the assignee or other information regarding the status, conduct, and dealings of the insolvent will be set aside. — In *re Thornhill*, (1895), 2 N. L. R. 105. Security for costs. — Ord. No. 2 of 1889, §§ 7, 56.

Allowance, refusal, or suspension of certificate (except in case of appeal) to be final in what cases. 133. The allowance of the certificate of the District Court, and any order for the refusal or suspension of the allowance thereof (except in case of appeal), shall be final and conclusive, and shall not be revised by the District Court, unless the said Court shall thereafter see good and sufficient cause to believe that the allowance of such certificate, or the refusal or suspension thereof, has been obtained on false evidence, or by reason of an improper suppression of

evidence, or has otherwise been fraudulently obtained, in any of which cases it shall and may be lawful for the District Court, upon the application of the insolvent, or of any creditor of the insolvent, and subject to such order as to deposit of a sum for costs, and to such notices to the insolvent and to creditors by advertisement or otherwise as the Court shall think fit, to grant a rehearing of the matter, and to re-hear the same accordingly, and upon such rehearing the District Court shall make such order as to the allowance of the certificate, or the refusal or suspension thereof, as the justice of the case may require, in like manner, upon like conditions, and having regard to the like circumstances, so far as the case will admit, as upon any original hearing; and in case the certificate shall have been previously allowed, and upon such rehearing the allowance thereof shall not be confirmed, such certificate shall have no force or effect whatever, and the same shall be delivered up to the Court and cancelled. And with respect to arrangements by deed:

Imp. § 104. See note to § 129, *supra*. The term of the suspension of the certificate commences from the date of the order of the District Judge, and not from the date of the confirmation of the order in appeal. — *In re Peris*, (1898), 3 N. L. R. 114. It is only under special circumstances that the matter of a certificate will be re-opened, when there has been a considerable lapse of time since the granting of the same. — *In re Jusey Peries*, (1875), *Ram*. 1872, 95.

Deeds of arrangement entered into between any debtor and certain of his creditors, in what cases binding on all; proviso. 134. Every deed or memorandum of arrangement now or hereafter entered into between any person and his creditors, and signed by or on behalf of six-sevenths in number and value of those creditors whose debts amount to ten pounds and upwards, touching such person's liabilities and his release therefrom, and the distribution, inspection, conduct, management, and mode of winding up of his estate, or all or any of such matters or any matters having reference thereto, shall (subject to the conditions hereinafter mentioned) be as effectual and obligatory in all respects upon all the creditors who shall not have signed such deed or memorandum of arrangement as if they had duly signed the same, and such deed or memorandum, when so signed, shall not be or be liable to be disturbed or impeached by reason of any prior or subsequent act of insolvency: Provided always that every creditor shall be accounted a creditor in value in respect of such amount only as upon an account fairly stated, after allowing the value of mortgaged property and other such available securities or liens from such person, shall appear to be the balance due to him.

Imp. 53 & 54 Vic. c. 71, § 3. See notes to § 124, *supra*. A composition is voidable if the debtor, without the consent of the creditors, pays some creditors more than the amount stipulated in the deed. But this does not apply to the payment of small creditors not parties to the arrangement. — *Wickremesekere v. Tatham*, (1873), *Gren*. III. 31.

When deed not to be effectual against creditor who has not signed. 135. No such deed or memorandum of arrangement shall be effectual or obligatory upon any creditor who shall not have signed the same until after the expiration of three months from the time at which such creditor shall have had notice from such person of his suspension of payment, and of such deed or memorandum of arrangement, unless such debtor shall within such time obtain from the District Court an order or certificate of the said Court declaring or certifying that such deed or memorandum of arrangement has been duly signed by or on behalf of such majority of the creditors as aforesaid; and it shall be lawful for the District Court of the district in which the person shall have resided or carried on business for six months next immediately preceding his suspension of payment to make such order or certificate on the petition of any such person, and to exercise jurisdiction in and over the matters of any such application; and no creditor who shall not have had fourteen days' notice of any intended application for such order or certificate as aforesaid shall be bound thereby.

Imp. 53 & 54 Vic. c. 71, § 3.

Trustee or inspector, etc., to certify as to the deed being signed. 136. When the trustee or inspector under any such deed or memorandum of arrangement, or if there shall be no such trustee or inspector, when any two of the creditors shall be satisfied that six-sevenths in number and value of the creditors whose debts amount to ten pounds and upwards have signed such deed or memorandum, it shall be lawful for such trustee or inspector, or for such two creditors, as the case may be, to certify the same to the District Court in writing, and such certificate shall be filed in Court, and shall thereupon be *prima facie* evidence in all Courts that such deed or memorandum of arrangement has been so signed.

Account of debt, etc., to be annexed to such certificate; proviso. 137. Every such certificate as last aforesaid shall have appended thereto a full account of the debts of such debtor, together with the names, residences, and occupations of his creditors, and shall be accompanied by an affidavit by such debtor verifying the same; and any omission in such account or the insertion therein of any debt not really existing, or of any larger amount of debt than that really existing, and which shall appear to the Court to have been made through the culpable negligence or fraud of such debtor, with intent to defraud any of his creditors, shall deprive him of the benefit of the provisions of this Ordinance with respect to arrangements by deed, and of the discharge proposed in any such deed or memorandum of arrangement: Provided always that any omission, insertion, or incorrectness in such account, which shall not have been made through such culpable negligence or fraud as aforesaid, shall not defeat or otherwise affect such deed or memorandum of arrangement.

Where an adjudication of insolvency is annulled on the ground that a composition has been accepted by the creditors, the assignee is entitled to retain possession of the property of the insolvent until paid his expenses. — *In re Rowlands*, (1881), 4 S. C. C. 83.

Rights of creditors. 138. The creditors of every such debtor shall have the same rights respectively as to set-off, mutual credit, lien, and priority, and joint and separate assets shall be distributed in like manner as in insolvency, and no creditor shall be prejudiced or affected by being a party to any such deed or memorandum of arrangement as aforesaid, or by the same being obligatory upon him as to his right or remedy against any person other than such debtor; and every person who would be entitled to prove in insolvency shall be deemed a creditor within the meaning of the provisions of this Ordinance with respect to arrangement by deed.

Court may interfere in case of improper administration of the estate. 139. If any creditor of any person shall be desirous to show that the administration of the estate of such person has not been duly conducted in conformity with such deed or memorandum of arrangement, it shall be lawful for him to apply to the District Court by petition, supported by affidavit, stating any facts or circumstances to show that such administration has not been duly conducted, and thereupon the Court shall have full power, and it is hereby fully authorized, to consider the subject matter of such application, and if it shall think fit may direct any inquiry, and in such manner as it shall think proper, into the subject of such application, and generally may make such order and exercise such jurisdiction in or over the subject matter of such application and the costs thereof as to the said Court shall appear just. And with respect to composition after adjudication of insolvency:

If after adjudication certain of the creditors accept composition, it shall bind the rest. 140. Any insolvent, at any time after he shall have passed his last examination, may call a meeting of his creditors (whereof and of the purport whereof twenty-one days' notice shall be given in the *Government Gazette*), and if the insolvent or his friend shall make an offer of composition and nine-tenths in number and value of the creditors assembled at such meeting shall agree to accept the same, another meeting for the purpose of deciding upon such offer shall be appointed to be holden, whereof such notice shall be given as aforesaid: and if at such second meeting nine-tenths in number and value of the creditors then present shall also agree to accept such offer, the District Court shall and may, upon such acceptance being testified by them in writing, and upon payment of such sum as the Court shall direct, annul the adjudication of insolvency and supersede or dismiss the petition for sequestration; and every creditor of such insolvent shall be bound to accept of such composition so agreed to.

Imp. 53 & 54 Vic. c. 71, § 3. An offer of a composition may be made after the refusal of a certificate. A previous insolvency is no bar to the annulment of a subsequent adjudication. The offer of a composition should be made to all of the creditors. — *In re Aboobakker Lebbe*, (1881), 4 S. C. C. 103. A composition binds only creditors having claims provable in insolvency proceedings. — *Caderavail v. Silva*, (1900), 1 Br. 374. Where there were eighteen creditors and seventeen agreed to accept a composition, but only seven had proofs, and of these one dissented, the Court held that under the circumstances the consent of six-sevenths of the creditors must be deemed to satisfy the requirements of this section. — (1856), Aust. 240.

Mode of voting in deciding upon such composition. 141. In deciding upon the offer of composition no creditor whose debt is below twenty pounds shall be reckoned in number, but the debt due to such creditor shall be computed in value; and

every creditor to the amount of fifty pounds and upwards residing out of Ceylon shall be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long before such meeting as that he have time to vote thereat, and such creditor shall be entitled to vote by letter of attorney executed and attested in manner required for a creditor's voting in the choice of assignees; and if any creditor shall agree to accept any gratuity or higher composition for assenting to such offer he shall forfeit the debt due to him, together with such gratuity or composition; and the insolvent shall (if thereto required) make oath before the Court that there has been no such transaction between him or any person with his privity and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent. And with respect to evidence:

Imp. 53 & 54 Vic. c. 71, § 3.

Officer of court to produce proceedings and give copies thereof. 142. The proper officer of the District Court shall, on the reasonable request of any insolvent, or of any creditor of such insolvent (having proved his debt), or on the like request of the proctor of any such insolvent or creditor, produce and show to such insolvent, creditor, or proctor at such times as the Court shall direct every petition for sequestration and adjudication of insolvency against or by such insolvent, and all orders and proceedings under any such petition or adjudication; and the Court shall order the assignees or officer of Court, as the case may be, to permit such insolvent, creditor, or proctor to have inspection at all reasonable times of all books, papers, and writings relating to the matters of such petition or adjudication, and the estate of the insolvent in the possession of the assignees or filed in Court in such matter, and permit him to inspect and examine the same; and such assignees or such officer shall provide for any such insolvent, creditor, or proctor requiring the same a copy of such petition or other proceeding, books, papers, and writings as aforesaid, or of such part thereof as shall be required, receiving such fee or sum, or rate of charge as may be authorized by the Court in that behalf.

If insolvent do not dispute the insolvency, Gazette to be evidence of the adjudication and petition, as against insolvent, and in suits or debts, etc., by assignees. 143. If the insolvent shall not (if he were within this Colony at the date of the adjudication) within twenty-one days after the advertisement of the insolvency in the *Government Gazette*, or (if he were in any part of the East India Company's territories at the date of the adjudication) within three months after such advertisement, or (if he were elsewhere at the date of the adjudication) within twelve months after such advertisement, have commenced an action or other proceeding to dispute or annul the petition for sequestration of his estate as insolvent, and shall not have prosecuted the same with due diligence and effect, the *Gazette* containing such advertisement shall be conclusive evidence in all cases as against such insolvent, and in all actions brought by the assignees for any debt or demand for which such insolvent might have sustained any action had he not been adjudged insolvent, that such person so adjudged insolvent became an insolvent before the date and filing of the petition for sequestration, and that such petition was filed on the day on which the same is stated in the *Gazette* to bear date.

Imp. § 132.

In other cases no proof of petitioning creditor's debt or act of insolvency, unless notice to dispute them. 144. In any action (other than an action brought by the assignees for any debt or demand for which the insolvent might have sustained an action had he not been adjudged insolvent), and whether at the suit of or against the assignees, or against any person acting under the warrant of the Court, for anything done under such warrant, no proof shall be required at the trial of the petitioning creditor's debt or of the act of the insolvency respectively, unless the other party in such action shall, if defendant at or before answering, and if the plaintiff before issue joined, give notice in writing to such assignees or other person that he intends to dispute one or both, and which of such matters; and in case such notice shall have been given, if such assignees or other person shall prove the matter so disputed, or the other party admit the same, the Judge before whom the cause shall be tried may (if he think fit) grant a certificate of such proof or admission; and such assignees or other person shall be entitled to the costs occasioned by such notice, and such costs shall, if such assignees or other person shall obtain a judgment, be added to the costs, and if the other party shall obtain

a judgment shall be deducted from the costs which such other party would otherwise be entitled to receive from such assignees or other persons.

Imp. § 134.

Court may award costs, and how recovered. 145. The Court may in all matters before it award such costs as to such Court shall seem fit and just; and in all cases in which costs shall be so awarded against any person it shall and may be lawful for such Court to cause such costs to be recovered from such person in the same manner as costs awarded by such Court in civil suits may be recovered

Imp. § 73.

Witnesses and persons known or suspected to have insolvent's property, etc., when entitled to costs. 146. Every person summoned to attend before the Court as a person known or suspected to have any of the estate of the insolvent in his possession, or who is supposed to be indebted to the insolvent, shall have such costs and charges as the Court in its discretion shall think fit, and every witness summoned to attend before the Court shall have his necessary expenses tendered to him in like manner as is now by law required upon service of subpoena to a witness in a civil action. And with respect to offences against the law relating to insolvency and other matters in this Ordinance:

Insolvent not surrendering, etc. 147. If any person adjudged insolvent shall not upon the day limited for his surrender, and before three of the clock of such day, or at the hour and upon the day allowed him for finishing his examination, after notice thereof in writing, to be served upon him personally or left at the usual or last known place of abode or business of such person, or personal notice in case such person be then in prison, and notice given in the *Government Gazette* of the filing of the petition for sequestration of his estate as insolvent, as the case may be, and of the sittings of the Court (having no lawful impediment proved to the satisfaction of the Court at such time, and allowed by the Court by a memorandum thereof then made on the proceedings), surrender himself to such Court and sign or subscribe to such surrender, and submit to be examined before such Court from time to time; or if any such insolvent upon such examination shall not discover all his real and personal estate, and how and to whom upon what consideration, and when he disposed of, assigned, or transferred any of such estate (and all books, papers, and writings relating thereunto), except such part as shall have been really and bona fide before sold or disposed of in the way of his trade or laid out in the ordinary expenses of his family; or if any such insolvent upon such examination shall not deliver up to such Court all such parts of such estate, and all books, papers, and writings relating thereunto as shall be in his possession, custody, or power (except the necessary wearing apparel of himself, his wife and children); or if any such insolvent shall remove, conceal, or embezzle any part of such estate to the value of ten pounds or upwards, or any books of accounts, papers, or writings relating thereto, with intent to defraud his creditors, every such insolvent shall be liable to transportation for life, or for such term not less than seven years as the Supreme Court shall adjudge, or shall be liable to imprisonment, with or without hard labour, for any term not exceeding seven years.

Imp. § 25.

Insolvent destroying or falsifying books, etc.; punishment. 148. If any insolvent shall, after an action of insolvency committed, or in contemplation of insolvency, or with intent to defeat the object of the law relating to insolvents, destroy, alter, mutilate, or falsify any of his books, papers, writings, or securities, or make or be privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, every such insolvent shall on conviction be liable to imprisonment, with or without hard labour, for any term not exceeding three years.

Imp. 32 & 33 Vic. c. 62, § 11.

Insolvent obtaining goods on credit under false pretences; or removing or concealing goods so obtained; punishment. 149. If any insolvent shall within three months next preceding the date of the filing of the petition for sequestration of his estate, under the false colour and pretence of carrying on business and dealing in the ordinary course of trade, obtain on credit from any other person any goods or property with intent to defraud the owner thereof, or if any insolvent shall, within such time and with such intent, remove, conceal, or dispose of any goods or property so obtained, every such insolvent shall on conviction be liable to

imprisonment, with or without hard labour, for any term not exceeding two years.

Imp. 32 & 33 Vic. c. 62, § 11.

False evidence; perjury. 150. Any insolvent or insolvent's wife who shall upon any examination directed or authorized by this Ordinance, and any person who shall upon examination or in any affidavit or deposition so authorized or directed, or in any affidavit or deposition, wilfully and corruptly give false evidence, or wilfully and corruptly swear anything which shall be false, being convicted thereof shall be liable to the penalties of wilful and corrupt perjury.

If at last examination it appears that insolvent has been guilty of any of the following offences, further protection refused; certificate refused or suspended. 151. If at the sitting appointed for the last examination of any insolvent, or at any adjournment thereof, it shall appear to the District Court that the insolvent has committed any of the offences hereinafter enumerated, the Court shall refuse to grant the insolvent any further protection from arrest, and if at any sitting or adjourned sitting for the allowance of the certificate of any insolvent it shall appear that he has committed any of such offences, the Court shall refuse to grant such certificate, or shall suspend the same for such time as it shall think fit, and shall in like manner refuse to grant the insolvent any further protection. Offences referred to: First: If the insolvent shall at any time after the filing of the petition for sequestration of his estate, or within two months next preceding the filing of such petition, with intent to conceal the state of his affairs or to defeat the objects of the law of insolvency, have destroyed any book, paper, deed, writing, or other document relating to his trade, dealings, or estate. Second: If the insolvent shall, with the like intent, have kept or caused to be kept false books, or have made false entries in, or withheld entries from, or wilfully altered or falsified any book, paper, deed, writing, or other document relating to his trade, dealings, or estate. Third: If the insolvent shall have contracted any of his debts by any manner of fraud or by means of false pretences, or shall by any manner of fraud or by means of false pretences have obtained the forbearance of any of his debts by any of his creditors. Fourth: If the insolvent shall at any time within two months next preceding the filing of the petition for sequestration of his estate, fraudulently, in contemplation of insolvency and not under pressure from any of his creditors, with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have paid or satisfied any such creditor wholly or in part, or have made away with, mortgaged, or charged any part of his property, of what kind soever. Fifth: If the insolvent shall at any time after the filing of the petition for sequestration of his estate, and with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have concealed from the District Court or his assignees any debt due to or from him, or have concealed or made away with any part of his property, of what kind soever. Sixth: If the insolvent shall under his insolvency, or at any meeting of his creditors, within three months next preceding the filing of the petition for sequestration of his estate, have attempted to account for any of his property by fictitious losses or expenses. Seventh: If the insolvent shall, within six months next preceding the filing of the petition for sequestration of his estate, have put any of his creditors to any unnecessary expense by any vexatious and frivolous defence or delay to any action for the recovery of any debt or demand provable under his insolvency, or shall be indebted in costs incurred in any action so vexatiously brought or defended. Eighth: If the insolvent shall, at any time after the filing of the petition for sequestration of his estate, have wilfully prevented or withheld the production of any book, paper, deed, writing, or other document relating to his trade, dealings, or estate. Ninth: If the insolvent (being a trader) shall during his trading have wilfully, and with intent to conceal the true state of his affairs, have omitted to keep proper accounts, or shall wilfully and with intent to conceal the true state of his affairs have kept his accounts imperfectly, carelessly, and negligently.

Imp. 32 & 33 Vic. c. 62, § 11. See notes to § 124, *supra*. An insolvent before being refused protection must be given an opportunity to explain points which appear to be against him. — (1870), Van. 40; In re Don Manuel, (1900), 1 Br. 249. A certificate may be granted although the insolvent has no assets. — (1870), Van. 64; (1877), Ram. 1877, 44. Unless the insolvent makes a satisfactory explanation as to the disposition of his property, no certificate will be

granted. — In re Spooner, *Ex parte* Turpin, (1884), 6 S. C. C. 130. The neglect to keep proper accounts, in order to disentitle the insolvent to a certificate, must be with intent to conceal the true state of his affairs. — (1869), Van. 26. A "trader" within the meaning of this section is a person who buys and sells goods; a coach proprietor, who had sold a few horses, does not thereby become a "trader." The requirements as to the keeping of accounts applies only to traders. — In re Kanagaratne, (1900), 1 Br. 70. Condemnation in damages for a breach of promise of marriage is not an offence within this section, and does not of itself disentitle the insolvent to a certificate. — In re Don Louis, (1872), Ram. 1872, 54. The proper procedure under this section is for the Court to make an order determining the class of certificate, and directing that its issue be suspended for a specified period. — In re Ahamado Lebbe, *Ex parte* Bank of Madras, (1884), 6 S. C. C. 124. As the power of granting certificate "R" is in effect a power to imprison the insolvent for a year, it should not be exercised until all conditions have been strictly complied with. — (1873), Gren. III. 101. Before granting a certificate the District Court should have before it a report from the assignee as to the conduct and dealings of the insolvent. — In re Presslie, (1895), 1 N. L. R. 321. It is, however, for the Judge to decide in each case whether the insolvent is entitled to a certificate or not, and the Judge is not bound to act merely on the report of the assignee. — In re de Croos, (1893), 6 N. L. R. 270. A certificate in Form "R" issued on account of the evasive and dilatory conduct of the insolvent. — In re Perera, *Ex parte* Perera, (1886), 7 S. C. C. 165. Where protection to the insolvent has been refused or withdrawn, a proved creditor may apply for certificate "R" without notice to the insolvent. — In re Lebena Marikar, (1876), Ram. 1872, 241. Protection refused. — In re H. M. Packier Bawa, (1856), 1 Lor. 105. A certificate in Form "R" refused. — In re Perera, *Ex parte* Perera, (1883), Wendt, 205. Second-class certificates granted. — (1871), Van. 156; In re Armitage, *Ex parte* Armitage, (1883), 5 S. C. C. 216.

On refusal of certificate or protection, the Court may grant assignees or creditor a certificate on which they may sue out execution against the insolvent; proviso. 152. The assignees for the time being of the estate and effects of any insolvent, when the accounts relating to his estate shall have become records of the Court, shall be deemed judgment creditors of such insolvent for the total amount of the debt which shall by such accounts appear to be due from him to his creditors; and every creditor of any insolvent, immediately after the proof of his debt shall have been admitted, shall be deemed a judgment creditor of such insolvent, to the extent of such proof; and the Court, when it shall have refused to grant the insolvent any further protection, or shall have refused or suspended his certificate, shall, on the application of such assignees or of any such creditor, grant a certificate in the form R in the Schedule to this Ordinance annexed, and every such certificate shall have the effect of a judgment entered up in the said Court, until the allowance of the certificate of conformity of such insolvent; and the assignees or the creditor to whom, according to such certificate, the insolvent shall be indebted as therein mentioned, shall be thereupon entitled to issue and enforce a writ of execution against the body of such insolvent; and the production of any such certificate to the secretary of such Court shall be sufficient authority to him to issue such writ: Provided always that every such last mentioned certificate shall be deemed to have been cancelled and discharged by the allowance of the certificate of conformity of such insolvent, from the time of such allowance; provided also that no execution by virtue of any certificate which shall be granted to any creditor or assignees as aforesaid shall be issued, nor shall any such certificate or execution in any manner affect any estate or effects which shall come to or be acquired by the insolvent, after the allowance of his certificate of conformity.

Assignees for the time being may issue execution on such certificate. 153. The assignees for the time being may issue and enforce execution upon any such certificate as last aforesaid as fully to all intents and purposes as the assignees to whom such certificate shall have been originally granted.

Insolvent taken, not discharged for one year. 154. If any insolvent shall be taken in execution after the refusal of protection, or after the refusal or suspension of his certificate, he shall not be discharged from such execution until he shall have been in prison for the full period of one year, except by order of the District Court.

This section does not apply where the insolvent is imprisoned for a judgment in a libel suit. — In re Baban Appu, (1884), 6 S. C. C. 24.

List of uncertificated insolvents to be published in the Gazette every six months. 155. Every District Judge shall transmit to the Colonial Secretary on or before the 15th day of January and the 15th day of July each year in the name and residence of every insolvent whose certificate shall have been refused or suspended

by such Judge, and who shall then be uncertificated; and the said Colonial Secretary shall thereupon cause a list, alphabetically arranged, showing the names and residences of all such uncertificated insolvents, to be prepared and published in the *Government Gazette* for general information.

Any person refusing to be sworn, or refusing to answer, or not answering fully, or refusing to sign examination, or to produce books, etc., may be committed. 156. If any insolvent, or the wife of any insolvent, shall refuse to make and sign the declaration contained in the Schedule to this Ordinance annexed, or if any other person shall refuse to be sworn, or shall refuse to answer any lawful question put by the Court, or shall not fully answer any such question to the satisfaction of the Court, or shall refuse to sign his examination when reduced into writing (not having any lawful objection allowed by the Court), or shall not produce any books, papers, deeds and writings, or other documents in his custody or power, relating to any of the matters under inquiry, which such insolvent, wife of the insolvent, or person is required by the Court to produce, and to the production of which he shall not state any objection allowed by the Court, it shall be lawful for the Court, by warrant, to commit such insolvent, wife of such insolvent, or other person to prison, there to remain without bail until he shall submit himself to such Court to be sworn, and full answers make to the satisfaction of such Court to all such lawful questions as shall be put by the Court, and sign such examination, and produce such books, papers, deeds, writings, and other documents in his custody or power, to the production of which no such objection as aforesaid has been allowed.

Questions to be specified in warrant; proviso. 157. If any person be committed by the District Court for refusing to answer or for not fully answering any question put to him by the Court, such Court shall in its warrant of commitment specify every such question: Provided that if any person so committed shall bring any habeas corpus in order to be discharged from such commitment, and there shall appear on the return of such habeas corpus any such insufficiency in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, it shall be lawful for the Supreme Court, and such Court is hereby required to commit such person to the same prison, there to remain until he shall conform, unless it shall be shown to such Court by the person committed that he has fully answered all lawful questions put to him by the District Court, or if such person was committed for refusing to be sworn, or for not signing his examinations, unless it shall appear to the Supreme Court that he had a sufficient reason for the same: Provided also that the Supreme Court shall, if required thereto by the person committed, in case the whole of the examination of the person so committed shall not have been stated in the warrant of commitment, inspect and consider the whole of the examination of such person whereof any such question was a part; and if it shall appear from the whole examination that the answer or answers of the person committed is or are satisfactory, such Court shall and may order the person so committed to be discharged.

Persons disobeying any order of Court to be committed. 158. If any person shall disobey any rule or order of the District Court, duly made by such Court, for enforcing any of the purposes and provisions of this Ordinance, or made or entered into by consent of such person for carrying into effect any of such purposes or provisions, the Court may, by warrant in the form S in the Schedule to this Ordinance annexed, commit the person so offending to prison, there to remain without bail until such Court, or the Supreme Court, shall make order to the contrary.

If petitioning creditor's debt be not due, or if act of insolvency be not proved, and petition be filed fraudulently or maliciously, Court may order satisfaction. 159. If the debt stated by the petitioning creditor in his affidavit or in his petition for sequestration and verified by affidavit to be due to him from any person, shall not be really due, or if, after a petition for sequestration filed, it shall not have been proved that the person against whom such petition has been filed had committed an act of insolvency, and it shall also appear that such petition was filed fraudulently or maliciously, the Court shall and may, upon petition of the person against whom any such petition was so filed, examine into the same, and order satisfaction to be made to him for the damages by him sustained.

Petitioning creditor compounding with person after insolvency to forfeit his debt and pay the money, etc. 160. If any petitioning creditor shall, after the filing

of his petition, receive any money, satisfaction, or security for his debt or any part thereof, whereby such petitioning creditor may receive more in the pound in respect of his debt than the other creditors, such petitioning creditor shall forfeit his whole debt, and shall also repay or deliver up such money, satisfaction, or security, or the full value thereof, to the assignees of such insolvent for the benefit of the creditors of the insolvent.

Concealing insolvent's effects; penalty; allowance to persons making discovery.

161. Any person who shall wilfully conceal any real or personal estate of the insolvent, and who shall not, within forty-two days after the filing of the petition for sequestration, discover such estate to the Court or to the assignees, shall, forfeit the sum of one hundred pounds, and double the value of the estate so concealed; and any person, other than the person who shall have concealed the same, who shall after such time voluntarily discover to the Court or to the assignees any part of such insolvent's estate not before come to the knowledge of the assignees, shall be allowed five per centum thereupon, and such further reward as the assignees, with the consent of the Court, shall think fit to be paid out of the estate recovered on such discovery.

Imp. § 51.

Obtaining money, etc., to forbear opposition to, or to consent to allowance of certificate; penalty. 162. If any creditor of any insolvent shall obtain any sum of money, or any property whatever, or security for money from any person as an inducement for forbearing to oppose or for consenting to the allowance of the certificate of such insolvent, or to forbear to petition for the recall of the same, every such creditor so offending shall forfeit and lose for every such offence the treble value or amount of such money, property, or security so obtained as the case may be.

Inserting advertisements without authority. 163. Any person who shall insert or cause to be inserted in the *Government Gazette*, or in any newspaper, any advertisement under this Ordinance without authority, or knowing the same to be false in any material particular, shall be guilty of an offence, and liable on conviction to punishment by fine or imprisonment as the District Court shall award.

[164—165. Are repealed by Ord. No. 24 of 1884 and Ord. No. 2 of 1889, respectively.]

Foreign Bankruptcy. — The trustee in an English insolvency has in respect of moveables in Ceylon a title superior to that of a local attaching creditor. — *Atkinson v. Boustead*, (1882), 5 S. C. C. 13. Two firms, consisting of the same partners, were carrying on business of the same nature in London and Colombo, under two different firm names. On 29th July, 1875, a petition for liquidation was filed by the London firm, and on the 19th August following a trustee was appointed by the English Court. On 18th August the Ceylon firm entered into a deed of arrangement with their Ceylon creditors, which was apparently signed by the requisite number of such creditors, and a certificate under § 135 was issued by the District Court. On a motion by the English trustee to set aside the deed of arrangement of 18th August, it was held that since according to the law of Holland and the English law insolvency proceedings are given extraterritorial effect, and as the filing of a petition for liquidation is an act of bankruptcy, and the title of the trustee relates back to the date of such filing, the English trustee, although appointed subsequently to the date of the deed of arrangement made in Ceylon, was entitled to moveable property situated in the Colony. It appeared further, in this case, that the deed of arrangement signed by the Ceylon creditors did not in fact bear the signature of six-sevenths of the creditors of the two firms forming one partnership — *In re Duncan, Anderson & Co.*, (1876), *Ram.* 1872, 277; 3 N. L. R. 282.

Schedule.

A.

The Insolvent Ordinance, 1853.

Declaration of insolvency.

I, the undersigned A. B., of
engagements with my creditors.

Dated at the hour of
as the case may be) this

do hereby declare that I am unable to meet my

o'clock (in the forenoon, or at noon, or in the afternoon,
day of in the year of our Lord

(Signed) A. B.

Witness:

C. D.

To the District Court of

(If the petition be by partners, alter the form accordingly and let it be signed by one on behalf of himself and partners. If the petition be by several, not being partners, then it must be signed by each, and in such case the names of the several petitioners should be stated in the attestation or attestations relating thereto respectively. If the petitioner can not speak to the place of residence or business of the debtor, strike out the averment as to that, and annex to the petition a separate affidavit of some person who can depose to the fact. If the petition be against partners, alter the form accordingly.)

(If the petition be by partners, alter the form accordingly, and state the names of the several petitioners in the attestation or attestations relating thereto respectively.)

E.

The Insolvent Ordinance, 1853.

Order to prosecute a petition for sequestration in a particular district.

In the Supreme Court of the Island of Ceylon, the _____ day of _____
 A. D. _____
 In the matter of a petition for sequestration as insolvent of the estate of C. D., of _____
 Upon application made to _____ this day by _____ (of counsel or
 proctor) for _____, and upon reading the affidavit of _____, it is hereby
 ordered that the petition for sequestration as insolvent of the estate of the above named C. D. be
 prosecuted in the District Court of _____.

F.

The Insolvent Ordinance, 1853.

Order to consolidate proceedings.

In the Supreme Court of the Island of Ceylon, the _____ day of _____,
 A. D. _____
 Ex parte _____
 In the matter of _____
 Upon application made to _____ this day by _____ (of counsel or
 proctor) for _____, and upon reading the affidavit of _____, it is ordered
 that (*stating the order*).

G.

The Insolvent Ordinance, 1853.

Order to transfer a petition for sequestration, etc., from one District Court to another District Court.

In the Supreme Court of the Island of Ceylon, the _____ day of _____,
 A. D. _____
 Ex parte _____
 In the matter of _____
 Upon application made to _____ this day of by _____ (of counsel
 or proctor) for _____, and upon reading the affidavit of _____, it is
 ordered that (*stating the order*).

H.

The Insolvent Ordinance, 1853.

Order for an attachment upon the estate of the insolvent.

In the District Court of _____, the _____ day of _____.
 In the matter of _____, an insolvent.
 To the Fiscal of the _____ Province.
 Whereas the above-named _____ has been adjudged an insolvent under the
 Insolvent Ordinance, 1853, the estate of the said _____ is hereby placed under se-
 questration in your hands, and you are hereby ordered forthwith to lay an attachment on the
 property of the said _____ under inventory thereof, and to proceed therein as directed
 by the said Ordinance, and to return this order with what you have done thereon to this Court
 on or before the _____ day of _____ next.
 And for so doing this shall be your sufficient warrant.

A. B.
 District Judge.

I.

The Insolvent Ordinance, 1853.

Order for petition for sequestration to be proceeded in on a substituted debt.

In the District Court of _____, the _____ day of _____.
 In the matter of _____, an insolvent.
 Upon application made to the Court this day, by _____ (of counsel or proctor) for _____
 a creditor of the above named insolvent, and who has proved a debt of sufficient amount to
 support an adjudication, and the debt of the petitioning creditor having been found by the Court
 to be insufficient to support the adjudication of insolvency against the above-named _____,
 it is hereby ordered that the petition for sequestration filed against the said _____
 the _____ day of _____ be proceeded in, and that the costs of, etc., (*stat-*
ing such order as to costs of any of the parties concerned as the Court thinks fit).

A. B.
 District Judge.

K.**The Insolvent Ordinance, 1853.***Order annulling adjudication.*

In the District Court of _____, the _____ day of _____.
 In the matter of _____.

Upon reading the proceedings in the above matter, and upon hearing (the evidence now adduced, *if the case be so*, and) what was alleged by _____, and being satisfied that the petitioning creditor's debt and act of insolvency (*or specify the particular matter deemed insufficient, as the case may require*) upon which the adjudication of insolvency made against the said _____ on the _____ day of _____ was grounded, were and are (*or, was and is*) insufficient to support such adjudication, and no other debt or act of insolvency (*or specify the particular matter requisite in lieu of that deemed insufficient, as the case may require*) sufficient to support such adjudication being proved, it is ordered that the adjudication of insolvency made against the said _____ on the said _____ day of _____ be annulled, and the same is hereby annulled accordingly.

A. B.
 District Judge.

L.**The Insolvent Ordinance, 1853.***Search warrant.*

In the District Court of _____, the _____ day of _____.

Whereas by evidence upon oath it hath been made to appear to this Court, acting in the prosecution of a petition for sequestration filed and now in prosecution against _____ of _____, bearing date the _____ of _____, and under which the said _____ has been adjudged insolvent, that there is reason to suspect and believe that property of the said _____ is concealed in the house (*or other place, describing it, as the case may be*) of one _____ of _____, such house not belonging to the said insolvent: These are therefore, by virtue of the Insolvent Ordinance, 1853, to authorize and require you, with necessary and proper assistants, to enter, in the daytime, into the house (*or other place, describing it, as the case may be*) of the said _____ situate at _____ aforesaid, and there diligently to search for the said property, and if any property of the said insolvent shall be there found by you on such search, that you seize the same, to be disposed of and dealt with according to the provisions of the said Ordinance.

Given under my hand in the District Court of _____, this _____ day of _____.

A. B.
 District Judge.
, if any person is

To the Fiscal of the _____ Province (*or to specially appointed by the Court*).

M.**The Insolvent Ordinance, 1853.***Form of declaration to be made by the insolvent or the insolvent's wife.*

I, A. B., the person adjudged an insolvent under a petition for sequestration of my estate, filed on the _____ day of _____ (*or, I, C. B., the wife of A. B., adjudged an insolvent under, etc.*), do solemnly promise and declare that I will make true answer to all such questions as may be proposed to me respecting all the property of the said A. B., and all dealings and transactions relating thereto, and will make a full and true disclosure of all that has been done with the said property, to the best of my knowledge, information, and belief.

(Signed) A. B.
 (*or C. B., wife of the said A. B.*)

N.**The Insolvent Ordinance, 1853.***Admission of debt due to the insolvent.*

I, the undersigned J. K., of _____, do hereby, in open court, confess that I am indebted to E. F., of _____, an insolvent, in the sum of _____ upon the balance of accounts between myself and the said E. F.

Witness:

(Signed) J. K.

A. B.
 District Judge.

O.

The Insolvent Ordinance, 1853.

Order for payment of debt admitted in court to be due to the estate of an insolvent.

In the District Court of _____, the _____ day of _____
In the matter of E. F., an insolvent.

Whereas J. K., of _____, in his examination taken the _____ day of _____, and signed by the said J. K., has admitted that he is indebted to the above-named insolvent in the sum of _____ upon the balance of accounts between the said J. K. and the said insolvent, it is hereby ordered that the said J. K. do pay to the assignees of the estate and effects of the said insolvent, in full discharge of the sum so admitted, the sum of _____ forthwith (or if otherwise, state the time and manner of payment) and that the said J. K. do also pay to the said assignees the sum of _____ for the costs of and incident to the summons of the said J. K. in his behalf.

A. B.

District Judge.

(If the Court shall not adjudge the costs of and incident to the summons to be paid by the person summoned, or if the Court shall adjudge the assignees to pay to the person summoned his costs out of the estate of the insolvent, alter the form accordingly.)

Q.¹)

The Insolvent Ordinance, 1853.

Certificate of conformity.

I, _____ District Judge of _____, acting in the prosecution of a petition for sequestration of the estate of _____ as insolvent, and bearing date the _____ day of _____, do certify that the said _____ became insolvent before the date and filing of the said petition within the true intent and meaning of the Insolvent Ordinance, 1853, and was thereupon adjudged insolvent accordingly; and I further certify that due notice was given in the *Government Gazette* of this Colony of such petition having been filed and of the adjudication thereon, and that two public sittings for the said insolvent to surrender and conform were duly appointed, the last of which said sittings was appointed to be on the _____ day of _____ last; and I further certify that such two several sittings were had pursuant to such notice, and that upon the said _____ day of _____ the said insolvent did surrender himself, and did sign such surrender and submit to be examined from time to time upon oath; and I further certify that the said insolvent did on the _____ day of _____ last finish his examination, and upon such examination made a full disclosure and discovery of his estate and effects, and in all things conformed, and so far as the Court can judge there doth not appear any reason to question the truth or fulness of such discovery; and I further certify that on the _____ day of _____ in the District Court of _____, I held a public sitting for the allowance of this certificate to the said insolvent (whereof and of the purport whereof the notice required in that behalf was duly given), and having regard to the conformity of the said insolvent to the said Ordinance, and to his conduct as a trader (or in relation to his estate) before as well as after his insolvency, I did then and there find the said insolvent entitled to such certificate, and did allow the same; and I further certify that his insolvency has arisen from unavoidable losses and misfortunes, and that he is entitled to and I do award him his certificate as of the first class; (or, that his insolvency has not wholly arisen from unavoidable losses and misfortunes, and that he is entitled to and I do award him this certificate as of the second class; or, that his insolvency has not arisen from unavoidable losses or misfortunes, and that he is only entitled to and I do only award him this certificate as of the third class.)

(If the certificate be allowed with conditions, the same to be inserted here.)

Given under my hand in the District Court of _____, this _____ day of _____.

A. B.

District Judge.

Signed in the presence of _____

R.

The Insolvent Ordinance, 1853.

Certificate to assignees or to creditor to entitle them to issue writ of execution.

In the District Court of _____, the _____ day of _____.

In the matter of _____, an insolvent.

I hereby certify that A. B., of _____, and C. D., of _____, assignees of the estates and effects of the above-named insolvent, are creditors of the said insolvent as such assignees for the sum of £ _____, in trust for the creditors of the said insolvent (or, that E. F., of _____, is a creditor of the said insolvent for the sum of £ _____), and that the said insolvent is not protected by this Court from process against this person.

G. H.

District Judge.

¹) Schedule P., containing provisions relating to stamp duties, is not reprinted because obsolete.

S.

The Insolvent Ordinance. 1853.*Warrant against person disobeying any order of the Court.*

Whereas by an order of this Court bearing date of _____ day of _____, made for enforcing the purposes and provisions of the Insolvent Ordinance, 1853, it was ordered that (as in the order); and whereas it is now proved that after the making of the said order, that is to say, on this _____ day of _____, a copy of the said order was duly served on the said _____ personally, and the original order at the same time shown to him, but the said _____ then refused (or neglected) to obey the same, and hath not as yet obeyed the said order: These are therefore to require you forthwith to take into your custody the body of the said _____, and him safely to convey to the prison at _____, and him there to deliver to the keeper of the said prison, together with this precept, and the keeper of the said prison is hereby required to receive the said _____ into his custody and him safely to keep and detain, without bail, until this Court or the Supreme Court shall make order to the contrary; and for so doing this shall be your sufficient warrant.

Given under my hand in the District Court of _____, the _____ day of _____ in the year _____.

A. B.
District Judge.

To the Fiscal of the

Province and to the keeper of the prison at _____.

b) No. 24 of 1884. An Ordinance to amend Ordinance No. 7 of 1853, entitled "An Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates" (25th November 1884).

Short title. 1. This Ordinance may be cited as *The Insolvent Estates Amendment Ordinance, 1884*.

Construction of Ordinance. 2. This Ordinance shall, except in so far as it is inconsistent therewith, be construed as one with Ordinance No. 7 of 1853, entitled "An Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates," and which in this Ordinance is referred to as the principal Ordinance.

[3. Is embodied in the principal Ordinance.]

[4. Repeals Ord. No. 7 of 1853, § 164.]

[5. Is repealed by Ord. No. 2 of 1889, § 2.]

Principal Ordinance to extend to Crown. 6. The provisions of the said section 36 of the principal Ordinance, as by this Ordinance amended, and of section 37 of such Ordinance, shall hereafter be taken to apply and extend to Crown debtors, as if the Crown had been specially mentioned in such provisions of the said Ordinance.

Since the passing of this Ordinance imprisonment in execution for a debt due to the Crown may form the basis of an adjudication of insolvency under the principal Ordinance. — In re Ferdinando, (1889), 9 S. C. C. 17; affirmed In re Ferdinando, (1890), 9 S. C. C. 107. This Ordinance does not require the Crown to prove Crown debts. Where an insolvent has been adjudicated insolvent upon the petition of a private creditor, and received a certificate of conformity, the Crown holding a judgment against the insolvent, and not having proved in the insolvency, may have the debtor committed. — In re Ferdinando, (1889), 9 S. C. C. 17; the Queen's Advocate v. Silva, (1890), 9 S. C. C. 78.

Straits Settlements.

Introduction.¹⁾

The Straits Settlements comprise Singapore²⁾ (including the Keeling Islands³⁾ and Christmas Island⁴⁾, Penang (including Province Wellesley and the Dindings)⁵⁾, Malacca, and Labuan⁶⁾.

History and government.⁷⁾

The known history of the Malay Peninsula begins with the settlement of Singapore about 1250 by emigrants from Sumatra. A few years after the founding of this settlement the colonists were expelled from Singapore, and founded the city of Malacca. Malacca was taken possession of by the Portuguese by Albuquerque in 1511, and remained subject to Portugal until 1641, when the Dutch succeeded in establishing themselves at that place. With the exception of the years 1795—1818, Malacca remained in the hands of the Dutch until 1824, when in pursuance of a treaty Malacca was ceded to England in exchange for Bencoolen in Sumatra.

The first British settlement was in Penang, which, then practically uninhabited, was ceded in 1786 by the Rajah of Kedah to the East India Company. The island of Singapore was taken possession of by Sir Stamford Raffles in 1819, under the terms of a treaty with the princes of Johore. Province Wellesley was acquired from the Rajah of Kedah in 1800, and the island of Pangkor and the Sembilan Islands by cession from Perak in 1826, confirmed in 1874. The island of Labuan was acquired under a treaty of cession in 1846, and became a part of the Colony of the Straits Settlements on 1st January, 1907 and is now a separate Settlement⁸⁾.

Sir George Leith, Bart., was appointed lieutenant-governor in 1800, and his instructions contained a number of provisions regarding the administration of justice. In 1805 Penang was formed into a separate presidency under the government of India, and the Court of Directors petitioned the King for the grant of a charter of justice. The government also established an ordinary (1805)⁹⁾.

The first Charter of Justice was granted 25th March, 1807, and the first session of the new court of judicature of Prince of Wales Island was held on 3d June, 1808¹⁰⁾. In the following year (20th May, 1809) the court of requests was established¹¹⁾.

Under the authority of the Act of Parliament of 5th July, 1825¹²⁾, Singapore and Malacca were annexed to Penang as one presidency, and a new Charter granted by the Crown (27th November, 1826). The new Charter did not differ materially from that of 1807¹³⁾. In 1830 the Settlements were made part of the Presidency of Bengal¹⁴⁾. In 1833 Parliament provided for an inquiry into the jurisdiction and powers of the courts in India, and a considerable part of the report of the commissioner is devoted to the Straits Settlements¹⁵⁾. A number of Acts were passed during the period of direct government by India¹⁶⁾.

¹⁾ See also Introduction to Federated Malay States. — ²⁾ Singapore, Penang, Province Wellesley, and Malacca constituted the original Colony as organized under 29 & 30 Vic. c. 115, and Letters Patent of 1st April, 1867. — ³⁾ Letters Patent, 1st February, 1886, and 20th March, 1903; Ord. No. 18 of 1903. — ⁴⁾ Letters Patent, 8th January, 1889; Ords. No. 14 of 1900, and No. 33 of 1902. — ⁵⁾ Ord. No. 9 of 1889. — ⁶⁾ Ords. No. 1 of 1907, No. 35 of 1907, and No. 6 of 1909. — ⁷⁾ In addition to the authorities cited in the notes to this and the succeeding section, see Newbold, *British Settlements in the Straits of Malacca*; Weld, *Straits Settlements* (in *Proceedings, Royal Colonial Institute*, 1883—1884). The history of the introduction of English law is given in the section on law in force. — ⁸⁾ Letters Patent, 30th October, 1906, Stat. R. & O. 1905, p. 890 Ord. No. 3 of 1911. — ⁹⁾ Kyshe, Vol. 1, XXII—XXVIII. — ¹⁰⁾ Ibid. XL. — ¹¹⁾ Ibid. XLIV. — ¹²⁾ 6 Geo. 4, c. 85, § 21. — ¹³⁾ Kyshe Vol. 1, LXI, LXII. — ¹⁴⁾ As to some of the legal effects, see *Caunter v. East Indian Co.*, (1883), 1 Kyshe, 12. — ¹⁵⁾ Special Reports of the Indian Law Commissioners, 1842—1847. — ¹⁶⁾ The Indian Acts (1834—1867) in force were collected under authority of Ord. No. 8 of 1889, and published in 1890. Only Acts contained in this collection are to be deemed in force. A large portion of these Acts was repealed by Ord. No. 33 of 1907.

The third Charter of Justice was granted 12th August, 1855, and ratified by an Act of Parliament¹). In 1867, by virtue of the Straits Settlements Act, 1866²), and Letters Patent³), the formal transfer of the Straits Settlements from the Indian Government was effected, and the Straits Settlements constituted a Colony as from 1st April, 1867⁴).

The present constitution was established by Letters Patent of 30th December, 1891⁵), which provides for a Governor assisted by an executive council⁶), and a legislative council composed of nine official and seven unofficial members, of whom two are nominated by the Chambers of Commerce of Singapore and Penang⁷). The Crown has reserved the right to disallow local enactments⁸). The Governor of the Straits Settlements is High Commissioner of the Federated Malay States and of the Protectorate of Brunei.

Law in force.

Some of the cases decided before the Charter of 1807 throw an interesting light on the conditions prevailing in the Settlements. In *In re Iche Lebedrecha*⁹) the Acting Magistrate (Manington) decreed a divorce according to Malay law. One of the earliest cases involving the application of English law was *Pelangee v. Tye Ang*¹⁰), where the Court held itself incompetent to grant probate of a will. The Judge (Dickens) observed in the course of his opinion: "After the strictest enquiry for the existing laws and regulations of this Island upon the principles of which the Judge and Magistrate has been, as aforesaid, directed to frame his judgment, the Judge and Magistrate has ascertained that Prince of Wales' Island prior to its cession to the British Government was under the dominion of a Chief, who governed it in an arbitrary manner, and not by any fixed laws, and it does not appear to the Judge and Magistrate that since the said cession, any code of civil municipal law has been enacted by due and competent authority as the law of this Island for the government of the Judge and Magistrate in pronouncing a judicial opinion in this cause. And it is certain that the Judge can not find one single civil or municipal law so enacted, and the municipal laws of any other country, merely as such, can not have any legal force at Prince of Wales' Island. The only law then that appears to be in force at Prince of Wales' Island, is 'the law of nature' — for municipal law, or civil law, by which the society at Prince of Wales' Island may be governed, however much wanted, has hitherto escaped the research, and has not been produced by the industry which the Judge and Magistrate has been enabled to apply for its attainment. And the Judge and Magistrate trusts that that industry, however unsuccessful, has not been unobserved by the supreme power which rules this Island. But the law of nature is silent, and gives no precepts respecting wills and testaments, or rights of succession, or of inheritance. It affords no light upon these subjects, or respecting the forms and precautions necessary to be observed in granting probates of wills and letters of administration to intestates' effects. These things are mere creatures of civil or municipal law; when any of these things therefore become the subject of judicial controversy before the Court of Adalut for this Island, where is the Judge and Magistrate to look for information? He has no resource, but in his own unassisted reason — *sed melius est judicare secundum leges et literas quam ex propria scientia et sententia*¹¹)."

In *Kamoo v. Bassett*¹²) Sir Edmond Stanley held that by the Charter of 1807 the English civil law was introduced into Penang, and that civil injuries could be redressed, according to English law, even where committed before the Charter. In *Rodyk v. Williamson*¹³) the Court held itself bound by the uniform course of authority to hold that the introduction of the Charter of 1807 had also introduced the existing law of England into Malacca, except in some cases where it was modified by

¹) 18 & 19 Vic., c. 93, § 4. See also 1 Kyshe, XCIV. — ²) 29 & 30 Vic. c. 115. — ³) 28th December, 1866, Stat. R. & O. Rev. 1904, Vol. 11, "Straits Settlements," p. 1. — ⁴) Kyshe, Vol. 1, CIII. — ⁵) Stat. R. & O. Rev. 1904, Vol. 11, "Straits Settlements," p. 6; proclaimed 18th February, 1892. — ⁶) Ibid. §§ 2, 7. — ⁷) Ibid. § 8. — ⁸) Ibid. § 11. — ⁹) (1797), 1 Kyshe, IX. — ¹⁰) (1803), 1 Kyshe, XIX. And see also *Government v. Hough*, (1803), which gave rise to an acrimonious dispute between the acting lieutenant-governor and the magistrate presiding in the case. — 1 Kyshe, XV—XIX. — ¹¹) This decision was reversed by the Lieutenant Governor (1803), 1 Kyshe, XXI. — ¹²) (1808), 1 Kyshe, 1. — ¹³) 24th May, 1834. Unreported, and record apparently missing. Cited in *Moraiss v. De Souza*, (1838), 1 Kyshe, 27; In re Goods of Abdullah, (1835), 2 Kyshe (Eccl.), 8; *Leicester*, 16; *Regina v. Willans*, (1858), 3 Kyshe, 19; *Leicester*, 66.

express provision, and had abrogated any law previously existing. The learned Recorder (Sir Benjamin Malkins) expressed some doubt whether if the question were a new one he should have given such construction to the Charter. But he felt bound by the weight of authority to decide against the continuance of the Dutch law at Malacca after 1807¹).

The question involved in *In re Goods of Abdullah*²) was the validity of a will. The instrument was not valid according to Mohammedan law, and it was contended that the Mohammedan law was enforced as to persons of Moslem faith, in Penang, and had not been displaced by the Charters. Sir Benjamin Malkins, R., says: "It may be worth while, however, before adverting to the terms of the Charter, to observe that though the Mohammedan law can not, independently of them, stand on a better footing here than the Dutch law at Malacca, it may very easily stand on a worse. To place it on the same, it would be necessary to prove that it existed, not as the custom of a particular portion of the inhabitants, but as the law of the place, up to the time of the first Charter. I believe it would be very difficult to prove the existence of any definite system of law applying to Prince of Wales' Island or Province Wellesley previous to their occupation by the English; but that law, whatever it was, would be the only law entitled to the same consideration as the Dutch law at Malacca; indeed, even that would not in general policy, though it might in strict legal argument; for there might be much hardship in depriving the settled inhabitants of Malacca of a system which they had long understood and enjoyed, but none in requiring the persons who resorted to these new and almost uninhabited districts (for such they were when we got them) to conform, as all settlers must, unless there is an express exception in their favour, to the law of the land thus settled in. I have said that I consider myself as having, in substance, disposed of the present question in the case of *Rodyk v. Williamson*; for all the arguments applicable to the present case would have applied to that also, the laws, customs, etc., of the Dutch being just as much preserved to them as those of any other class of inhabitants, except inasmuch as they may be less repugnant to the English law, and therefore less frequently affected by its introduction; and the Dutch laws being also (which perhaps the Mohammedan laws might be proved to have been here, but that would be a matter of evidence) the law of the country before the Charter. The latter argument, however, was disposed of in that case; nor was it there contended that the general words of the Charter, saving to the different inhabitants their several religions, manners, and customs, had the operation now ascribed to them. Nor, in my opinion, can any such operation be sustained. If the question were entirely a new one, it would seem to me to admit of very little doubt. The operation contended for is quite unlimited; it gives to all the inhabitants of these places the full benefit of their own laws, religions, and customs; for no line is drawn to confine the effect of the words relied on, either to any particular nations, or to any particular rights. The effect contended for, therefore, goes far beyond the state of the law at Calcutta, Madras, or Bombay, where the benefit, if it be one, is confined to Mohammedans and Hindoos, and is limited to certain classes of rights and privileges. This is not a very probable operation of a Charter made for the administration of law to a new population, and where therefore the reasons for such a reservation on the continent of India did not, at least to the same extent, exist." These statements are approved in *Moraiss v. De Souza*³).

In *Regina v. Willans*⁴) the question involved was whether any part of the statute law of England of as recent a date as 1823 was in force in Penang. The

¹) See summary in *In re Goods of Abdullah*, (1835), 2 Kyshe (Ecl.), 8, at 9, 10. — ²) (1835), 2 Kyshe (Ecl.) 8; Leicester 16. — ³) (1838), 1 Kyshe, 27. — ⁴) (1858), 3 Kyshe, 16; Leicester, 66. The opinion, containing a masterly review of the history of the British Settlement of Penang is, in part as follows: "Having regard to the circumstances under which this place became a British possession, it may be doubted whether any, or, if any, then what body of law ought de jure to have been considered at the time of the establishment of the Colony, as its *lex loci*, that is, as the territorial law applying to all classes of its inhabitants indiscriminately, without distinction of race, creed, or nationality. The general rule of law determining what is the law of a territory is, that if the new acquisition be an uninhabited country found out by British subjects and occupied, the law of England, so far as it is applicable (1 Pl. Com. 107), becomes, on the foundation of the settlement, the law of the land (2 P. Wms. 75), but that if it be an inhabited country obtained by conquest or cession, the law in existence at the time of its acquisition, continues in force, until changed with by the new sovereign. In the one case the settlers carry with them to their new homes, their laws, usages, and

learned Recorder (Sir Peter Benson Maxwell) re-examined the whole question, and in an elaborate opinion held that at the time of the cession (1786) Penang had

liberties, as their birthright. In the other, the conquered or ceded inhabitants are allowed the analogous, though more precarious, privilege of preserving theirs, subject to the will of the conqueror. This Settlement however, did not fall exactly under either branch of the above rule. It was neither a Colony of British subjects, in the ordinary sense of the expression, nor can it be said to have been an inhabited country when ceded, because four Malay families were found encamped upon it, when it was first occupied by us (Jour. Ind. Arch. 409). It was a desert island belonging to the Rajah of Quedah, and ceded by that prince in 1786 to an English corporate body, which was invested with quasi sovereign powers over territories in its possession, but which it held in trust for the British Crown. Indeed, it was once considered to be not free from doubt, whether the sovereignty of the Island was ever ceded (id. p. 295). (See the terms of the cession in 2 Jour. Ind. Arch. [New series] 189.) Mr. Light and the body of marines who first landed here, came, not as British colonisers of a desert Island, but as a garrison to take possession of a ceded territory; and assuming that they were strictly British, and that they brought the law of England with them, yet, having regard to the temporary nature and object of their inhabitation here, that law can hardly have been made the *lex loci* by them, but was only the personal law of the garrison and their followers. (Rex v. Brampton, 10 East, 282, 288.) The bulk of the first settlers were Chinese, Malays and Chulias (5 Jour. Ind. Arch. p. 9), who, obviously, could not establish their respective laws in a British possession as the *lex* or the *leges loci*; and the few Englishmen who established themselves here at the foundation of the Settlement, came, not as men assuming the dominion of a desert land, and settling on it as a matter of right, but as strangers permitted as a matter of favour, to dwell in a country belonging to a quasi-foreign power, with the government of which they had no concern. Mr. Light, the first Superintendent, was instructed to admit into the Island only such colonists as he thought it safe and advisable to admit (id. p. 114); and it can hardly be contended that the handful of Englishmen who were allowed to establish themselves here under such circumstances, and whose right to reside without the express license of the Company, was more than once disputed (Minute of Mr. Philipps on the Landed Tenures of Wales' Island. p. 2 [reprinted 1884, p. 3]), were such colonists as carry their laws as their birthright to their new homes. The Governor-General in Council, it is true, had power to make ordinances and regulations for the government of the place (13 Geo. III, c. 63, sec. 36), but the power was not exercised in declaring English or other law, to be the *lex loci*; and the Crown and Parliament remained equally silent. Again, Penang being, at the time when it became a British possession, without inhabitants to claim the right of being governed by any existing laws, and without tribunals to enforce any, it would be difficult to assert that the law of Quedah continued to be the territorial law after its cession. Such a doctrine would imply that the continuance of the existing law in a ceded or conquered country, was the right, however precarious, of the late sovereign or of the soil itself, rather than the privilege of the inhabitants. But the case of Jamaica, referred to in Campbell v. Hall, (1 Cowp. 212), shews that this is not so. Though taken from the Spaniards, Spanish law was not considered in force there, after all the Spaniards had left the Island. When an inhabited or conquered country is ceded, the new sovereign impliedly undertakes to administer the existing laws among his new subjects, until he changes them, but it does not follow that when the country is a desert, he is to be presumed to undertake that he will enforce the laws of the former sovereign when settlers shall afterwards arrive. Another objection to the continuance of the former law would arise in this case, from the nature of the Mohammedan law, which is the law of Quedah. Lord Coke laid it down in Calvin's Case (7 Rep. 10), that 'if a Christian King should conquer a kingdom of an infidel, and bring them under his subjection, then ipso facto the laws of the infidel are abrogated,' and although Lord Mansfield treated this proposition as absurd, the Indian Law Commissioners are well justified, I think, in asserting that 'a system of law which according to its own principles, can only be administered by Mohammedan judges and Mohammedan arbitrators, upon the testimony of Mohammedan witnesses, is not a system which can devolve ipso jure, and without express acceptance, upon a government and people of a different faith.' (Report on Petition of East Indians and Armenians [App. Rep. Ind. Law Comers., 1842]). It seems to me impossible to hold that any Christian country could be presumed to adopt or tolerate such a system as its *lex loci*. In such a case, according to Coke, 'until certain laws are established, the King by himself, and such judges as he should appoint, should judge the inhabitants and their causes according to natural equity, in such sort as kings in ancient times did with their kingdoms before any certain municipal laws were given, as before hath been said' (Calvin's Case, 7 Rep. 10), or, more probably, according to the third resolution of the Privy Council (2 P. Wms. 75), English law would at once come in force — the only natural equity known to English sovereigns and English judges. But whatever ought, *de jure*, to have been the law of the land when the colony was founded, it is clear beyond all doubt, that for the first twenty years and upwards of its history, no body of known law was in fact recognized as the law of the place. As to the law of England, so far was it from being regarded as the *lex loci*, that it was hardly recognized even as the personal law of its English inhabitants. This appears very clearly from the early records of the local Government which were published a few years ago in the Journal of the Indian Archipelago, under the title of 'Notices

no well established system of law, and that for a period of twenty years thereafter no body of laws was in fact recognized as the *lex loci*, and that while the Charter

of Penang,' by a gentleman holding a high office in the Settlement. In the first place, the law of England was not in force for the punishment of crime. Mr. Light was directed in 1788 "to preserve good order in the Settlement as well as he could," not by punishing those who offended against it, according to English or other known body of law, but "by confinement or other common punishment," (4 Jour. Ind. Arch. 643); and five years later he is found carrying out his instructions by "whipping and confining to the public works, or sending off the Island, the thieves, house-breakers, and other disorderly persons" who, he complained, then infested the Island (4 Jour. Ind. Arch. 656). But this jurisdiction extended only to those inhabitants who were not British subjects — *id.* 643. These, it appears, he was ordered, at least in cases of murder, to send to Calcutta for trial before the Supreme Court there (5 Jour. Ind. Arch. 2). But when, in 1793, a man named Sudds was accordingly sent there on a charge of murder, Sir W. Burroughs, the Advocate-General, gave it as his opinion, that "there was not any law by which the well-meant directions given to the Superintendent of Prince of Wales' Island . . . could be supported, as far as they related to the trial or punishment of murder, or any other crimes at that Island," (5 Jour. Ind. Arch. 5); for the jurisdiction of the Supreme Court of Calcutta was then confined to Bengal, Behar, and Orissa (13 Geo. III, c. 63, s. 14). When it was extended by the 39 & 40 Geo. III, c. 76, s. 20, to all factories and places subject to the Bengal Presidency, fresh instructions were sent (25th March, 1800) to Sir George Leith, the Lieutenant-Governor of the Island, directing that "Europeans guilty of murder or other crimes of enormity should be sent to Fort William," (5 Jour. Ind. Arch. 158); but for lesser offences, they appear to have been left in total impunity. As late as 1805, the Governor complains that while provision had been made for the punishment of native criminals, "the more turbulent European remains on the Island free from all restraint, with the power of committing every act of injustice and irregularity towards his neighbour and the most peaceable native, having set at defiance all authority as not legally established on the Island," (6 Jour. Ind. Arch. 93). It may be said that this proves the want of legally constituted courts, rather than the absence of law, but criminal law can hardly be said to exist where there are no tribunals to enforce it. However this may be, what criminal law was in force was not English law. In 1794, a body of Regulations were passed by Lord Teignmouth, the Governor-General, for preserving the peace of the Island (5 Jour. Ind. Arch. 294); and these appear to have continued in force, and indeed, to have been the only criminal law in force, down to the time when the first Charter was granted. Next, the law of England was as little recognized in civil matters. Even the general rules of inheritance, which Blackstone considers to be among those portions of English law which are carried to their settlements by English settlers (1 Bl. Com. 107), were wholly disregarded. Mr. Dickens, who was appointed in 1800, partly to act as Judge or Assessor to the Lieutenant-Governor (5 Jour. Ind. Arch. 167), and partly to frame a code of laws for the Settlement, (*id.* p. 195), urged earnestly in that year that the Governor-General should enact a Regulation upon the subject (*id.* p. 119); and even as late as 1823, we find Mr. Phillips, the Governor of the Settlement, mentioning that "the rules which, according to British law, govern the disposition and inheritance of real property have never been made applicable to our lands," etc. (Minute on the Landed Tenures of Prince of Wales' Island, p. 8 (reprinted, 1884, p. 8). So, with respect to personal property. In 1804, Mr. Farquhar, the Lieutenant-Governor, in applying to the Supreme Government for instructions for the distribution of the effects of a person domiciled in the Island, who had died intestate, stated, that there was here "no law nor any fixed custom", according to which it could be distributed (5 Jour. Ind. Arch. 409). Again, slaves were bought and sold, not only openly, but with the sanction of the local Government, one of whose early cares was to provide registers for those transactions (Minute on the Landed Tenures of Prince of Wales' Island, p. 10; 5 Jour. Ind. Arch. p. 102, 296); and taxes were imposed by the sole authority of the Governor-General in Council, *viz.*, a duty of 2 per cent on all sales of lands and on the estate and effects of deceased persons (4 Jour. Ind. Arch. 646, 9). Thus, two of the principles of English law were completely disregarded — that which makes a slave free when he touches British soil, or in other words, comes within the jurisdiction of British law, and that which protects the subjects from taxation except by his representatives. There were Courts and Judges here before the Charter, but the justice which they administered between man and man within their respective jurisdictions, was not in accordance with the rules of English law. In 1796, justice was administered in petty civil cases among the various native populations by the headmen or captains, as they were called, of their own nation, nominated by the Superintendent, subject to an appeal to an European gentleman who acted as Magistrate, and who himself tried the more important civil cases in the first instance (5 Jour. Ind. Arch. 106, 193). The result then to be collected from the early records of the Settlement, is that for the first twenty and odd years of its history, the country had no territorial law. The task of maintaining order among the early colonists was left to the commandant of the garrison. Crime was repressed and punished by a kind of martial law, that is, by such punishments as a Court Martial pronounces, and the chief local executive authority, or the Governor-General in Council considered appropriate to the offence. In matters of succession, personal status, contract, and perhaps tort also, as many systems of law were in force as there were nationalities in the Island; and all those laws, again,

does not declare *totidem verbis* that English law shall be the territorial law of the Island, all its leading provisions manifestly require that justice shall be administered only in accordance with English law.

In *Choa Choon Neoh v. Spottiswoode*¹), Maxwell, C. J., says: "In this Colony so much of the law of England as was in existence when it was imported here, and is of general and not merely local policy, and adapted to the condition and wants of the inhabitants, is the law of the land; and further, that law is subject, in its application to the various alien races established here, to such modifications as are necessary to prevent it from operating unjustly and oppressively on them."

The question as to what law prevailed in Penang prior to the Charter of 1807 again arose in *Fatimah v. Logan*²). It was argued that Penang having been at the time of the cession a part of the territories of the Rajah of Kedah, a Mohammedan prince, the Mohammedan law continued in force after the cession until altered by the new sovereign. Mr. Justice Hackett says: "It appears to me that this position is untenable. In 1786, Penang being then a desert and uncultivated island, uninhabited except by a few itinerant fishermen, and without any fixed institution, was ceded by the Rajah of Kedah to Captain Light, an officer of the East India Company, for and on behalf of the Company Here we have the fact that an island virtually uninhabited, is occupied and settled by British subjects in the name of the King of England. The case therefore would seem to fall within the general rule laid down in our law books, and which Lord Kingsdown thus expresses in a recent case: 'When Englishmen establish themselves in an uninhabited or barbarous country, they carry with them not only the laws, but the sovereignty of their own state; and those who live amongst them and become members of their community, become also partakers of and subject to the same laws.' (2 Moo. P. C. [N. S.] 59.) But it seems to have been thought that Penang did not come within the operation of the rule to which I have referred for two reasons, first, because the island was not altogether vacant of inhabitants, and secondly, because it was

were probably tempered or modified by that law of nature, or that natural justice which appears to have been the chief guide of the European Magistrate who constituted the Court of Appeal. . . . In the midst of all this confusion, this much, and indeed this much only, seems to be clear, that so far from the law of England being in force as the law of the land, its most general and elementary principles were not recognized even by the English portion of the community, or enforced by the existing tribunals. It must be presumed that the Charter of 1807, was granted with a full knowledge of this state of things, and was intentionally adapted to it. No law was introduced aliunde, contemporaneously with the Charter. It was competent to the Crown to introduce the law of England into the Settlement by such an instrument as a Charter (*Campbell v. Hall*, 1 Cowp. 204); and if that law was not previously in force, and the language of the Charter directed that it should be administered here, it follows that the Charter did introduce the law of England into the Settlement; and the question, to what extent English law became the law of the land is, then, a question of construction rather than of general legal principle, or at least of the one as well as of the other. Now, the Charter does not declare, *totidem verbis*, that that law shall be the territorial law of the Island; but all its leading provisions manifestly require that justice shall be administered according to it, and it alone. As to criminal law, its language is too explicit to admit of doubt. It requires that the Court shall hear and determine indictments and offences, and give judgment thereupon, and award execution thereof, and shall in all respects administer criminal justice in such or the like manner and form, or as nearly as the condition and circumstances of the place and the persons will admit of, as in England (1st. Charter, p. 38). And I think it equally plain that English law was intended to be applied in civil cases also. The Charter directs that the Court shall, in those cases, 'give and pass judgment and sentence according to justice and right' (id. p. 26). The 'justice and right' intended are clearly not those abstract notions respecting that vague thing called natural equity, or the law of nature, which the Judge, or even the sovereign may have formed in his own mind, but the justice and right of which the sovereign is the source and dispenser. The words are obviously used in the same sense as in the well known chapter of *Magna Charta* from which they were probably borrowed: "Nulli vendemus, nulli negabimus aut differemus justitiam vel rectum." They are, in jurisprudence, mere synonyms for law, or at least only measurable by it; and a direction in an English Charter to decide according to justice and right, without expressly stating by what body of known law they shall be dispensed, and so to decide in a country which has not already an established body of law, is plainly a direction to decide according to the law of England." See also the comments in the *Penang Gazette*, 8th August, 1857, and 24th October, 1857, reprinted in *Leicester*, 102—113.

¹) (1869), 1 Kyshe, 216; Woods O. C.; Leicester, 421, practically overruling *In the Goods of Choa Chong Long*, (1857), Leicester, 417; approved in *Yeap Cheah Neo v. Ong Cheng Neo*, (1875), L. R. 6 P. C. 381. — ²) (1871), 1 Kyshe, 255; Leicester, 288.

taken possession on behalf of the East India Company, and was not therefore subject to the English Crown. But it can scarcely be seriously contended that the few wandering fishermen who were found on the shores of the Island could be regarded in the same light as the inhabitants of a settled country with laws of their own, and who are entitled to the benefit of them until changed by competent authority. Neither do I think that the circumstance of possession of the Island, being taken by an officer of the East Indian Company, for and on behalf of the Company, prevented the transfer of the sovereignty and dominion of the Island to the Crown of Great Britain and Ireland. Nothing can be clearer than the determination of Parliament to preserve the undoubted sovereignty of the Crown of England over the territorial acquisitions of the Company."

In *Yeap Cheah Neo v. Ong Cheng Neo*¹⁾ we have the authoritative decision of the Privy Council on the question of the introduction of English law into Penang. After a review of the different Charters, Sir Montague E. Smith says: "With reference to this history, it is really immaterial to consider whether Prince of Wales' Island, or, as it is now called, Penang, should be regarded as ceded or newly-settled territory, for there is no trace of any laws having been established there before it was acquired by the East Indian Company. In either view the law of England must be taken to be the governing law, so far as it is applicable to the circumstances of the place, and modified in its application by these circumstances. This would be the case in a country newly settled by subjects of the British Crown; and, in their Lordships' view, the Charters referred to, if they are to be regarded as having introduced the law of England into the Colony contain the words 'as far as circumstances will admit,' the same qualification."

Commenting on the case of *Choa Choon Neoh v. Spottiswoode, Ford, A. C. J.*, says²⁾: "So much of his decision, as pronounced the law of England to be in force in this Colony, and declared the degree in which in cases of the kind, regard should be had to the habits and usages of the various people residing in it, to be correctly stated, has been expressly confirmed by the Privy Council in the case of *Ong Cheah Neo v. Yeap Cheah Neo* (L. R. 6 P. C. 381), but whether modifications in favour of the habits and usages of foreign races dwelling here are to flow from the express provisions to that end in the Charter itself, or to follow as the sequence of the introduction of English law under the principle of comity, as laid down in *Regina v. Willans*, was not a question directly before their Lordships, and I gather from the language of their judgment (p. 393) that their Lordships considered such modifications might not only flow from the language of the Charter, but even a third source, viz., that principle of law which attached to subjects of the British Crown settling in a new country such modifications in the law of their original domicile as the circumstances of the place require."

The question as to the extent to which the English law is adopted frequently presents considerable difficulties. "It is to be observed," says Ford, A. C. J.³⁾, "that from whatever source the modifications of English law in favour of native usages and customs come, they do not reach us in a compact body of very well ascertained rules and decisions. The words 'as far as circumstances will admit', necessarily leave some scope for the discretion of a Court in the application of English law to the ever varied circumstances of new settlements, and even the application of the principle of comity fails as a guide, immediately we have to travel off a few well beaten tracks⁴⁾."

The English law relating to the making, operation, interpretation, assignment, and discharge of contracts is in force, except as modified by local enactments⁵⁾.

¹⁾ (1875), L. R. 6 P. C. 381; 1 Kyshe, 357, affirming s. c. (1872), 1 Kyshe, 326; Leicester, 314. — ²⁾ *Khoo Tiang Bee v. Tan Beng Gwat*, (1877), 1 Kyshe, 413. — ³⁾ *Khoo Tiang Bee v. Tan Beng Gwat*, (1877), 1 Kyshe, 413. — ⁴⁾ See in addition to the cases already cited in this section: *Nonia Cheah Yew v. Othmansaw Merican*, (1861), 1 Kyshe, 160, (marriage); *Coomarapah Chetty v. Kang Oon Lock*, (1872), 1 Kyshe, 314, (Lord's Day Act); *Regina v. Tan Sin Hap*, (1877), 3 Kyshe, 94, (gaming); *Penang Foundry Co. v. Cheah Tek Soon*, (1882), 1 Kyshe, 559, (Statute of Frauds). — ⁵⁾ *Scott, Sinclair & Co. v. Brown & Co.*, (1852), 1 Kyshe, 85, (principal and agent); *Chassernu v. Mathieu & Co.*, (1858), 1 Kyshe, 117, (damages); *Oh Woe Kee v. Kuppen Tomby*, (1861), Leicester 164, (liquidated damages); *Schmidt v. Spahn*, (1863), Leicester, 229, (restraint of trade, capacity); *Rungasamy v. Pillay*, (1867), 1 Kyshe, 168, (quantum meruit); *Kho Guan Chut v. Tan Giok Lan*, (1868), Leicester, 256, (alteration); *Coomarapah Chetty v. Kang Oon Lock*, (1872), 1 Kyshe, 314, (Sunday contracts); *Mah Keow v. Cheah Hit*, (1872), 1 Kyshe, 321; Leicester, 364, (infancy);

The law of England relating to mercantile matters, except as modified by local enactments, prevails¹⁾. The local enactments in force consist of certain Indian Acts expressly adopted²⁾, and Ordinances of the Colony.

Aliens are entitled to acquire and hold lands in the Colony, and to sell, transfer, assign, bequeath, or transmit the same on the same terms as British subjects³⁾. The rights of married women are regulated by the Married Women's Property Ordinance⁴⁾, and by the Mohammedan Marriage Ordinance, 1880⁵⁾. Bills of sale⁶⁾ and merchandise marks⁷⁾ are regulated by local Ordinances.

The law of the Colony is in force in Labuan⁸⁾.

Courts and procedure.

The judicial system comprises the Supreme Court, District Courts, Police Courts, and Coroner's Courts⁹⁾. The Supreme Court consists of a Chief Justice and three or more Puisne Judges, and is duly constituted during and notwithstanding any vacancy in the office of any Judge thereof or the absence of any Judge¹⁰⁾. The Supreme Court is a court of record exercising both original and appellate civil and criminal jurisdiction¹¹⁾. The original civil jurisdiction of the Supreme Court consists of: 1. The jurisdiction formerly exercised in England by: a) The High Court of Chancery, including therein the jurisdiction to appoint and control guardians of infants; b) The Court of Queen's Bench; c) The Court of Common Pleas; d) The Court of Exchequer as a Court of Revenue as well as a common law Court, and which is now exercised by His Majesty's High Court of Justice; 2. The jurisdiction and authority of a Colonial Court of Admiralty under the Colonial Courts of Admiralty Act, 1890; 3. Jurisdiction to appoint and control guardians of idiots and lunatics; 4. Jurisdiction to issue writs of distress for arrears of rent in all cases; 5. The jurisdiction within the Colony which was in an Ecclesiastical Court in England prior to the passing of the Divorce and Matrimonial Causes Act, 1857, so far as regards marriages between persons one or more of whom profess the Christian religion; 6. Jurisdiction in probate and administration; 7. Jurisdiction under any written law for the time being in force relating to bankruptcy or joint stock companies; and 8. Any other jurisdiction which is now or may hereafter be specially conferred¹²⁾.

The Supreme Court when exercising appellate civil jurisdiction is called the Court of Appeal, and is constituted by not less than three Judges. Appeals are decided by majority vote, but if there is no such majority the decision appealed against stands¹³⁾. The appellate civil jurisdiction of the Supreme Court consists of: 1. Appeals from the Supreme Court in its original jurisdiction; 2. Appeals from a District Court; 3. Any jurisdiction which may be conferred upon it with regard to appeals from the civil courts of Brunei¹⁴⁾. No appeal lies from the decision of a District Court when the amount in dispute, or the value of the subject matter of

Mayandee Chetty v. Sultan Meracayar, (1872), 1 Kyshe, 350, (conditions); *Fredericks v. Dunlop*, (1873), *Leicester*, 369, (agency); *Lim Sim Kay v. Fraser & Co.*, (1874), 1 Kyshe, 380, (interpretation); *Allen v. Meera Pullay*, (1877), 1 Kyshe, 394, (mutuality, restraint of trade); *Letchman Chetty v. Narainan Chetty*, (1878), 1 Kyshe, 467, (interpretation); *Yeo Long Tow & Co. v. Rautenberg, Schmidt & Co.*, (1880), 1 Kyshe, 491, (damages); *Hin Lee & Co. v. Cohen*, (1882), 1 Kyshe, 542, (auctioneer's contracts); *Penang Foundry Co. v. Cheah Tek Soon*, (1882), 1 Kyshe, 559, (Statute of Frauds); *Mahomed Mustan v. Kana Shaik Ibrahim*, (1882), 1 Kyshe, 582, (specific performance); *Cheah Tek Thye v. Hassan Kudus*, (1884), 1 Kyshe, 654, (auctioneer's contracts); *Koh Seang Thye v. Chung Ah Quee*, (1886), 4 Kyshe, 136, (interpretation); *Mama Nondu & Co. v. Poonasamy Naiku & Co.*, (1889), 4 Kyshe, 511, (contract performable in another jurisdiction); *Meyer v. Coldenburgh*, (1890), 4 Kyshe, 596, (interpretation); *Gold Fields of Siam v. Riley, Hargreaves & Co.*, (1892), 5 S. L. J., 55, (preliminary negotiations); *Spence v. Katz Bros.*, (1892), 5 S. L. J., 61.

¹⁾ Ord. No. 8 of 1909, § 6, *infra*. — ²⁾ The Indian Acts, (1834 to 1867) in force were collected under authority of Ord. No. 8 of 1889, and published in 1890. Only Acts contained in this collection are to be deemed in force. A large portion of these Acts was repealed by Ord. No. 33 of 1907. — ³⁾ Ord. No. 13 of 1875, § 1. — ⁴⁾ Ord. No. 11 of 1902. This Ordinance contains provisions similar to those in the Imperial *Married Women's Property Act*, 1882, (45 & 46 Vic. c. 75), as amended by the *Married Women's Property Act*, 1893 (56 & 57 Vic. c. 63). §§ 1—5, 12—19, 23. There are no provisions similar to those contained in §§ 6—11 and 20—22 of the Imperial Act. — ⁵⁾ Ord. No. 5 of 1880. — ⁶⁾ Ord. No. 12 of 1886 (as amended by Ord. No. 6 of 1894). — ⁷⁾ Ord. No. 3 of 1888. This Ordinance contains provisions similar to those in the Imperial Act 50 & 51 Vic. c. 28, §§ 1—2 (5), 3—7, 9—12, 14, 15, 17—19 (3). — ⁸⁾ Ord. No. 3 of 1911, § 4, reprinted in full, *infra*. — ⁹⁾ Ord. No. 30 of 1907, § 2. — ¹⁰⁾ *Ibid.* § 3. — ¹¹⁾ *Ibid.* § 8. — ¹²⁾ Ord. No. 30 of 1907, § 9. — ¹³⁾ *Ibid.* § 11. — ¹⁴⁾ *Ibid.* § 12.

the suit does not exceed \$ 100, unless the Supreme Court either of its own motion or on the application of the party aggrieved otherwise orders. Where the amount in dispute or the value of the subject matter exceeds in value \$ 100, an appeal lies as of right¹⁾.

District Courts presided over by a District Judge or an Assistant District Judge are established in each of the Settlements²⁾. A District Court when presided over by a District Judge has original civil jurisdiction in all cases where the amount in dispute or value of the subject matter does not exceed \$ 500, and when presided over by an Assistant District Judge, where such amount does not exceed \$ 100, provided in either case that the cause of action has arisen either wholly or in part within the local jurisdiction of the District Court, or the defendant or any one of the defendants at the time of institution of the action actually and voluntarily resides or carries on business, or personally works for gain within such local limits. By consent of the parties to an action jurisdiction may be assumed, although the amount of the subject matter may exceed the value limit of jurisdiction³⁾. The District Court has jurisdiction when the amount of the claim, though originally in excess of the jurisdiction of such Court, is brought within it by a set-off or counter-claim admitted by both parties⁴⁾. A plaintiff may relinquish any portion of his claim in order to bring the action within the jurisdiction of the District Court⁵⁾, but he may not split an action or bring more than one action in respect of the same cause of action in order to confer such jurisdiction⁶⁾. The District Courts have no jurisdiction in actions concerning acts of certain Government officers, the recovery of immoveable property (with certain exceptions), the partition of immoveable property, the foreclosure or redemption of mortgages on immoveable property, the determination of rights or interests in immoveable property, the specific performance or rescission of contracts, the granting of injunctions, the cancellation or rectification of instruments, the enforcement of trusts, accounts (except in certain cases), and the issuing of declaratory decrees⁷⁾. The District Courts also have power in actions of probate and administration where the estate after deducting debts does not exceed in value \$ 1000⁸⁾, and power to issue writs of distress for rent in all cases where the amount of rent to be distrained does not exceed the value limit of jurisdiction, and the premises in respect of which the rent is due are situated within the local limits of the jurisdiction⁹⁾.

The Resident of Labuan is the District Judge of the District Court of Labuan. The District Judge of Labuan has original civil jurisdiction in all actions and proceedings, except actions concerning official acts of certain Government officers, where the amount in dispute or value of the subject matter does not exceed \$ 2000, and is not subject to the limitations on jurisdiction imposed on ordinary District Courts. The jurisdiction of the District Judge in probate and administration extends to cases where the estate does not exceed in value \$ 5000. The Assistant District Judge of Labuan has the same jurisdiction and powers as an Assistant District Judge of other District Courts, but during the absence of the District Judge of Labuan applications, not involving the real matter in dispute between the parties may be made to the Assistant District Judge in all cases within the jurisdiction of the District Judge of Labuan¹⁰⁾.

The Police Courts and Coroner's Courts and Justices of the Peace exercise jurisdiction in criminal matters¹¹⁾.

An appeal lies to the Privy Council from the Supreme Court in the exercise of its appellate jurisdiction from any final judgment or order where the amount or value of the subject matter of the suit is \$ 2500 or upwards, or involves directly or indirectly some claim or question to or respecting property of like amount or value, and from an interlocutory judgment in a case certified as a fit one for appeal¹²⁾. Application for leave to appeal must be filed within six months from the date of the decision appealed against, or within such further time not exceeding twelve months from such date as may be allowed by the Court¹³⁾. Appellant must furnish security for the cost of appeal not exceeding \$ 2000¹⁴⁾. The judgment or order appealed against is enforced unless the Supreme Court otherwise directs. The Supreme Court may, if it thinks fit, pending the appeal impound any immoveable property in dispute or any part thereof, or allow the judgment or order appeal against to be

1) Ibid. § 14. — 2) Ibid. §§ 47, 48. — 3) Ibid. § 52. — 4) Ibid. § 53. — 5) Ibid. § 54. — 6) Ibid. § 55. — 7) Ibid. §§ 56, 57. — 8) Ibid. §§ 58, 59. — 9) Ibid. § 60. — 10) Ord. No. 35 of 1907, § 2. And see Ord. No. 3 of 1911, § 46. — 11) Ord. No. 30 of 1907, §§ 63–67. — 12) Ord. No. 2 of 1893, § 22. — 13) Ibid. § 23. — 14) Ibid. § 25.

enforced, the respondent giving security, or stay the execution of the judgment or order appealed against, the appellant giving security¹⁾.

Law and equity²⁾ are administered concurrently. Procedure is regulated by the Civil Procedure Code, 1907³⁾. The limitation of actions is governed by an Ordinance of 1896⁴⁾.

Bibliography.

Collections of Ordinances.

Harwood, John Augustus: Acts and Ordinances of the Legislative Council of the Straits Settlements, 1867—86, with certain Acts of Parliament, Orders in Council, Letters Patent, and Indian Acts in force in the Colony. London. 1886.

Indian Acts in force. Singapore. 1890.

Garrard, Charles Goodricke: Acts and Ordinances of the Legislative Council of the Straits Settlements, 1867—98. London. 1898.

Sessional ordinances. Annual. Singapore.

Maxwell, William George: Chronological list of the Imperial Acts applying to the Straits Settlements, of the Indian Acts in force, and of the Ordinances of the Straits Settlements to December 31, 1910. Singapore. 1911.

Koek, E. R.: A table of the written law judicially considered by the Supreme Court of the Straits Settlements, 1808—98. Singapore. 1900.

Report of Cases.

| Name of report. | No. of vols. | Period. | Method of citation. |
|---|--------------|-----------|---------------------|
| Woods' Oriental Cases | 1 | 1842—1869 | Woods O. C. |
| Leicester's Reports | 1 | 1827—1877 | Leicester |
| Norton-Kyshe's Reports | 4 | 1808—1890 | Kyshe |
| Straits Settlements Law Reports | 10 | 1893—1907 | S. S. L. R. |
| Straits Law Journal and Reports | 5 | 1888—1892 | S. L. J. |

Legal Periodicals.

Straits Law Journal, Vols. 1—5. Singapore. 1888—1892.

Straits Law Journal, New Series, Vol. 5. Singapore. 1892

Works on Law.

Napier, Walter J.: Introduction to the study of the law administered in the colony of the Straits Settlements. Singapore. 1898.

¹⁾ Ibid. § 30. — ²⁾ Ord. No. 8 of 1909, § 4. — ³⁾ Ord. No. 31 of 1907, as amended by Ord. No. 12 of 1909. — ⁴⁾ Ord. No. 6 of 1896. The periods of limitation on actions on commercial causes are contained in the second Schedule, which is in part as follows:

| Description of suit. | Time from which period begins to run. |
|---|---|
| <i>Period of limitation: two years.</i> | |
| Against a carrier for compensation for losing or injuring goods. | When the loss or injury occurs. |
| Against a carrier for compensation for delay in delivering goods. | When the goods ought to be delivered. |
| <i>Period of limitation: three years.</i> | |
| For the balance of money advanced in payment of goods to be delivered. | When the goods ought to be delivered. |
| For the price of goods sold and delivered, where no fixed period of credit is agreed upon. | The date of the delivery of the goods. |
| For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit. | When the period of credit expires. |
| For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given. | When the period of the proposed bill elapses. |
| For money payable for money lent. | When the loan is made. |
| Like suit when the lender has given a cheque for the money. | When the cheque is paid. |
| For money lent under an agreement that it shall be payable on demand. | When the loan is made. |
| For money deposited under an agreement that it shall be payable on demand. | When the demand is made. |
| For money payable to plaintiff for money paid for the defendant. | When the money is paid. |

Statutes.¹⁾

Application of Law.

a) No. 8 of 1909. An Ordinance to consolidate certain Provisions of the Civil Law (15th July, 1909).

Part II. Mercantile law.

Law of England to be observed in all commercial matters; proviso as to immoveable property. 6. In all questions or issues which may hereafter arise or which may have to be decided in the Colony, with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile

| Description of suit. | Time from which period begins to run. |
|--|--|
| <i>Period of limitation: three years.</i> | |
| For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. | When the money is received. |
| For money payable for interest upon money due from the defendant to the plaintiff. | When the interest becomes due. |
| For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them. | When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives. |
| For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency. | When the time specified arrives or the contingency happens. |
| On a single bond, where a day is specified for payment. | The day so specified. |
| On a single bond, where no such day is specified. | The day of executing the bond. |
| On a bond subject to a condition. | When the condition is broken. |
| On a bill of exchange or promissory note payable at a fixed time after date. | When the bill or note falls due. |
| On a bill of exchange payable at sight, or after sight, but not at a fixed time. | When the bill is presented. |
| On a bill of exchange accepted payable at a particular place. | When the bill is presented at that place. |
| On a bill of exchange or promissory note payable at a fixed time after sight or after demand. | When the fixed time expires. |
| On a bill of exchange or promissory note payable on demand, and not accompanied by any writing restraining or postponing the right to sue. | The date of the bill or note. |
| On a promissory note or bond payable by instalments. | The expiration of the first term of payment, as to the part then payable; and, for the other parts, the expiration of the respective terms of payment. |
| On a promissory note or bond payable by instalments which provides that, if default be made in payment of one instalment, the whole shall be due. | When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default in respect of which there is no such waiver. |
| On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen. | The date of the delivery to the payee. |
| On a dishonoured foreign bill where protest has been made and notice given. | When the notice is given. |
| By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance. | The date of the refusal to accept. |
| By the acceptor of an accommodation bill against the drawer. | When the acceptor pays the amount of the bill. |
| Suit on a bill of exchange, promissory note, or bond not herein expressly provided for. | When the bill, note, or bond becomes payable. |
| By a surety against the principal debtor. | When the surety pays the creditor. |
| By a surety against a co-surety. | When the surety pays anything in excess of his own share. |
| Upon any other contract to indemnify. | When the plaintiff is actually damaged. |
| By a solicitor for his costs of a suit or a particular business, there being no express agreement as to the time when costs are to be paid. | The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance. |
| For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties. | The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account. |
| On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers. | When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person. |
| By the assured to recover premia paid under a policy voidable at the election of the insurers. | When the insurers elect to avoid the policy. |

¹⁾ In force 1st January, 1912.

law generally, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any Statute. Provided that nothing herein contained shall be taken to introduce into the Colony any part of the law of England relating to the tenure or conveyance or assurance of, or succession to, any immoveable property, or any estate, right, or interest thereon.

For the history of the adoption of English law in the Colony, see Introduction, Law in force, *supra*.

The effect and extent of the operation of this section, *semble*, were once in doubt. — Shagapah Chetty v. Khoo Chye Seng, (1880), cited in Penang Foundry Co. v. Cheah Tek Soon, (1882), 1 Kyshe, 559. The section adopts the English law, both statutory and common law. — Penang Foundry Co. v. Cheah Tek Soon, (1882), 1 Kyshe, 559. By virtue of this section, and subject to the limitations therein set forth, the following Imperial Acts are in force in the Straits Settlements:

Partnership — 53 & 54 Vic., c. 39. The holder of free shares in a Chinese partnership is a partner and not a mere manager. — Choo Wee Neo v. Kho Gow Neo, (1888), 1 S. L. J. 26. Partners stand in a fiduciary position toward each other, and must disclose all information regarding the partnership business to each other. — Habib Abdul Rahman v. Abdul Cader, (1886), 4 Kyshe, 193. A partner is authorized to use the names of his copartners in legal proceedings on behalf of the firm. — Gan Guat Chuan v. Kho Su Cheang, (1869), 1 Kyshe, 222. Where after the death of a partner the business is carried on by the surviving partner with the executor of the deceased partner, the estate of the deceased partner is entitled to share in the profits of the business so carried on. — Shaik Pareetho v. Embramsah, (1889), 4 Kyshe, 491. A stipulation in a partnership agreement that the "business is to be continued forever" is interpreted to mean that the business is to be carried on during the lifetime of the partners. — Choo Wee Neo v. Kho Gow Neo, (1888), 1 S. L. J. 26. The death of a partner dissolves the partnership, not only as regards the deceased and the surviving partners, but also as among the surviving partners. — In re Adams, (1853), 2 Kyshe (Bankr.), 3. *Quære*, whether the mere trade initials of a firm constitute a firm name. *Semble*, a native of British India carrying on business in the Straits Settlements, but not residing in the Colony, can not be sued in the firm name. — Moona Thaina Ahna Mootiah Chitty v. Navena Ahna Ahvena, (1898), 5 S. S. L. R. 37. As to accounts between partners, see Chin Guan Tak v. China Seah Pow, (1883), 1 Kyshe,

| Description of suit. | Time from which period begins to run. |
|--|--|
| <i>Period of limitation: three years.</i> | |
| Against a factor for an account. | When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates. |
| By a principal against his agent for moveable property received by the latter and not accounted for. | When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates. |
| Other suits by principals against agents for neglect or misconduct. | When the neglect or misconduct becomes known to the plaintiff. |
| To cancel or set aside an instrument not otherwise provided for. | When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him. |
| For money paid upon an existing consideration which afterwards fails. | The date of the failure. |
| For an account and a share of the profits of a dissolved partnership. | The date of the dissolution. |
| For a call by a company registered under any Ordinance. | When the call is payable. |
| For specific performance of a contract. | The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. |
| For the rescission of a contract. | When the facts entitling the plaintiff to have the contract rescinded first become known to him. |
| For compensation for the breach of any contract, express or implied, not in writing and not herein specially provided for. | When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases. |

Period of limitation: six years.

| | |
|---|---|
| For compensation for the breach of a contract in writing. | When the period of limitation would begin to run against a suit brought on a similar contract not in writing. |
| Upon a foreign judgment. | The date of the judgment. |
| Suit for which no period of limitation is provided elsewhere in this schedule. | When the right to sue accrues. |
| Suits instituted in the Colony on contracts entered into in a foreign country are subject to the rules prescribed by this Ordinance. No foreign rule of limitation shall be a defence to a suit instituted in the Colony on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule. — Ord. No. 6 of 1896, § 11. | |

586; *Khoo Yah Hong v. Khay Thye*, (1884), 1 Kyshe, 647; *Lee Chin Poo v. Lee Chye Hoon*, (1888), 4 Kyshe, 380.

Limited Partnership — 7 Edw. 7, c. 24.

Sale of Goods — 56 & 57 Vic. c. 71. Where goods are agreed to be sold by measure, but no memorandum is drawn up, and no part payment is made, and the goods not yet measured are left with the seller for the convenience of the buyer, the mere fact that when the bill of parcels was presented for payment the buyer promised to pay within a few days, is not sufficient to constitute "an acceptance and receipt of the goods, or part thereof" within section 17 of the Statute of Frauds. — *Revely & Co. v. Kam Kong Gay*, (1840), 1 Kyshe, 32. The memorandum for the sale of goods of the value of £10, or upwards, must contain the names of the seller and buyer, the terms of sale, the price, and must be signed by the person to be charged, or by his agent thereunto lawfully authorized. — *Hooglandt v. Mahomed Isup*, (1868), 1 Kyshe, 184. A bought and sold note in the following terms: "Twenty or thirty piculs white pepper within eighty days or longer at option of purchaser" and signed by the buyer and seller is a sufficient memorandum under section 4 of the Statute of Frauds, and, *semble*, under the Sale of Goods Act. — *Lorrain, Gillespie & Co. v. Khoo Heng Team*, (1871), Leicester, 280. A memorandum written on paper upon which the name of the seller is printed in the heading and the name of the buyer written in the memorandum, and stating the goods sold and the price to be paid, and witnessed by the name of the seller at the foot of the instrument by means of a chop, is a sufficient memorandum within the Sale of Goods Act. — *Saiboo Tamby v. Chop Kim Chin Bee*, (1898), 5 S. S. L. R. 54; 2 Kyshe, History of the Laws and Courts of Hongkong, 526 N. A contract providing for the sale of 25 000—30 000 cases, but not stating at whose option the amount is to be determined, authorizes the seller to deliver any amount between the figures. — *Brandt & Co. v. Goh Guan Lee*, (1889), 2 S. L. J. 46. Where the memorandum of sale is silent as to whether the sale is by sample or not parol evidence is not admissible to show that the sale was one by sample. The doctrine of caveat emptor applied. — *Lorrain v. Neo Leang*, (1869), Leicester, 271. The doctrine of caveat emptor does not apply where the seller avowedly sells a particular article, and delivers an entirely different article. The buyer in such a case may refuse to pay the price, or having paid it may recover it from the seller as money had and received to his use, on the ground of a total failure of consideration. — *Wee Kow v. Chartered Bank of India, Australia, and China*, (1867), 1 Kyshe, 167. But the rule of caveat emptor applies in the case of the sale of an existing specific chattel which the buyer has inspected. There is in such cases no exception by implied warranty of quality, even where the goods are bought for a particular purpose, made known to the seller at the time of the sale. — *Markwald & Co. v. McAlister & Co.*, (1884), 1 Kyshe, 667, (explaining *Randall v. Newsum*, (1877), L. R. 2 Q. B. D. 102). In the sale of goods by description there is in addition to the condition that the goods shall answer to the description an implied warranty, if the purchaser has not inspected the goods, that they shall be of merchantable quality under the description, and the rule of caveat emptor does not apply. — *Behr & Co. v. Lee Swee Tin*, (1895), 3 S. S. L. R. 48. Where goods are directed to be manufactured, and where therefore the buyer is necessarily dependent upon the honesty of the manufacturer, there is an implied warranty that the goods shall be of merchantable quality. Such an implied warranty of quality may also arise by virtue of well-established customs in the particular business. Where there is a general warranty of quality, and a part of the goods are not the quality warranted, the purchaser may recover the whole of the amount paid. Where in a purchase of slabs of tin, some of which bore the chop of the seller, and the rest the chop of another firm, and the seller stated that "all the tin that goes out of my shop is good," such statement amounts to an express warranty that all the tin sold was pure and merchantable. — *Kho Chin Jan v. Lim Tow*, (1836), 1 Kyshe, 22. In the case of a sale of coffee, saved from a godown which had been destroyed by fire, the owner had caused to be published a notice stating that the goods "have been slightly damaged by water, but still nothing to prevent them being made use of." The buyer examined the coffee at the sale, and purchased it. At the sale the goods were described as salvage, no statement was made as to quality, nor any reference made to the published notice. After the sale, but before the balance of the purchase price had been paid, the seller discovered that the coffee was impregnated with arsenic, and unfit for consumption. Nevertheless the seller received the remainder of the price without informing the buyer of this circumstance. It was held that the maxim caveat emptor applied, and that the buyer was not entitled to recover back the price paid. — *Tan Cheng v. Murray*, (1893), 2 S. S. L. R. 35. Where the contract provides for delivery in Singapore, the buyer may select any reasonable place within that area. — *Leach v. Sin Moh & Co.*, (1902), 7 S. S. L. R. 38.

Factors — 52 & 53 Vic. c. 45. Independently of the Factors Act there is no common law right entitling a factor having a lien to pledge the value of that lien. Under 5 & 6 Vic. c. 39, § 3, there could be no pledge of such lien for an antecedent debt. — *Vermont v. Hongkong & Shanghai Bank*, (1891), 5 S. L. J. 53.

Bills of Lading — 18 & 19 Vic. c. 111. Within the meaning of the Stamp Ordinance, 1907, "bill of lading" means any instrument signed by the owner of a vessel or his agent acknow-

ledging the receipt of goods therein described, and undertaking to deliver the same at a place and to a person therein mentioned, or indicated, or to order. Such bills of lading are subject to a stamp duty of 10 cents for each copy, the stamp to be cancelled by the person by whom the instrument is made or executed. — Ord. No. 36 of 1907, § 3 (4). A provision in a bill of lading "freight to be paid in Liverpool one month after sailing, the vessel lost or not lost" does not destroy the lien for freight. — *Guthrie v. McKie*, (1849), *Leicester*, 414. A provision exempting the shipowner from liability for "any act, neglect, or default whatsoever of pilots, master, or crew in the management or navigation of the ship" does not exempt the shipowner from damage caused by sea water leaking through a cargo port which was insecurely closed, which damage occurred while the ship was still in port. The word "management" as used in this connection means the management of the ship while she is in motion, and actually on her voyage. Words of doubtful import as used in a clause exempting a shipowner from liability are construed against the shipowner. — *Ban Chin Hong & Co. v. Indo-China Steam Navigation Co.*, (1890), 4 *Kyshe*, 677. Where goods were shipped to be delivered at destination to order or assigns under a bill of lading which provided that "in all cases and under all circumstances the liability of the company shall absolutely cease when the goods are free of the ship's tackle, and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee," and the goods were delivered to landing agents appointed by the carrier, and for that purpose had been discharged from the ship's tackle into lighters sent by such landing agents, but never reached the consignees owing to a fraud to which the landing agents were parties, it was held that although there had been no delivery to the consignees under the bill of lading, and that the bill of lading can not be regarded as spent or exhausted until the goods are placed under the absolute dominion and control of the consignees, nevertheless the clause providing for cesser of liability was unambiguous and was operative in the present case to relieve the carrier from responsibility. *Semble*, the landing agents are strictly speaking not exclusively agents of either the carrier or of the consignees. They are in the position of intermediaries owing duties to both parties, agents for the carrier as long as the contract of affreightment remains unexhausted, agents for the consignees as soon as the bill of lading is produced with the delivery order releasing the lien for freight. — *Chartered Bank of India v. British India Steam Navigation Co.*, (1909) *A. C.* 369; affirming the decision of the Supreme Court of the Straits Settlements (1907).

Bills of Exchange — 45 & 46 *Vic.* c. 61; 6 *Edw.* 7, c. 17. Within the meaning of the The Stamp Ordinance, 1907, "bill of exchange" includes draft, order and letter of credit, and any document or writing (except a bank note or cheque) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money; and the expression "bill of exchange payable on demand" includes a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, and b) an order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf. "Cheque" means a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. "Promissory note" includes any document or writing (except a bank note) containing a promise to pay any sum of money. A note promising the payment of any sum of money out of any particular fund which may or may not be available or upon any condition or contingency which may or may not be performed or happen is to be deemed a promissory note for that sum of money. The first holder in the Colony of any bill of exchange, cheque or promissory note drawn or made out of the Colony shall before he presents the same for acceptance or payment or indorses, transfers, or otherwise negotiates the same in the Colony, affix thereto the proper stamp and cancel the same. Provided that: a) If, at the time any such bill of exchange, cheque, or note comes into the hands of any holder thereof in the Colony, the proper adhesive stamp is affixed thereto and cancelled in the manner prescribed by section 5 subsection 4, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Ordinance, such stamp shall so far as relates to such holder be deemed to have been duly affixed and cancelled. b) Nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp. Where any bill of exchange or cheque chargeable with the duty of four cents is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as afore-

said, and such bill or cheque shall, so far as respects the duty, be deemed good and valid. Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill or cheque. — Ord. No. 36 of 1907, §§ 3 (3, 9, 27), 36, 37. The following stamp duties are payable: bill of exchange, payable on demand or at sight or on presentation, 4 cents; bill of exchange of any other kind whatsoever (except a cheque) and promissory note of any kind whatsoever drawn, or expressed to be payable, or actually paid or indorsed, or in any manner negotiated in the Colony, where the amount or value of the money for which the bill or note is drawn or made does not exceed \$ 100, 5 cents; cheque, 4 cents; notarial act, that is to say, any instrument, indorsement, note, attestation, certificate or entry not being a protest made or signed by a notary public in the execution of the duties of his office, or by any other person lawfully acting as a notary public, 50 cents; protest of bill or note, that is to say, any declaration in writing made by a notary public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note, 50 cents. The stamp, if an adhesive one must, in the case of a cheque, be cancelled by the drawer, in the case of a bill of exchange drawn or made out of the Colony, by the first holder in the Colony, and in other cases by the person by whom the bill is signed. — Ibid. Schedules, as amended by Ord. No. 2 of 1908. An instrument in the following form is not negotiable: "Penang, 9th May, 1882. J. Mahomed Cauder Hussain, otherwise called Pah Etam, do hereby in consideration of Sayna Mahomed Ghouse Merican wholly discontinuing from this date his two actions (No. 285 of 1880 and No. 52 of 1882) against me in the Supreme Court, Penang, promise and agree with the said Sayna Mahomed Ghouse Merican to pay him or Mahomed Mydin Nacodah Merican his attorney, or either of their order, the sum of two thousand five hundred dollars (\$ 2500) in full of all claims by monthly instalments of fifty dollars (\$ 50) a month, commencing from the ninth day of May, 1882, and in default of payment of any one instalment the whole amount then unpaid to become immediately due and payable. (Signed) Mahomed Gauder Hussain (in Tamil) Witnesses:

(Signed) H. N. Merican

(Signed) (A Tamil signature)

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| Revenue Stamp 25 cents 9-5-82 |
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The holder of this document could not sue on it unless he could show that the suits mentioned in it had in fact been discontinued. The effect would be to oblige the person with whom the instrument might be sought to be negotiated as a note to inquire whether the uncertainty (the discontinuing of the actions named) had been reduced to a certainty. The instrument is so encumbered with conditions and contingencies that it can not be held to be a negotiable one. — *Hajee Shaik Abdul Cader v. Mahomed Cader Hussain*, (1886), 4 Kyshe, 181; following *Carlos v. Fancourt*, (1793), 5 T. R. 482. A promissory note in Malay characters, payable to "Tuan Shaik Awady or the agent of the said Tuan Shaik Awady" is a negotiable instrument, and is payable to the person named or bearer. — *Shaik Ebrahim Bin Allee v. Cohen*, (1871), 1 Kyshe, 242. A negotiable instrument may be signed by a duly authorized agent, and the authorization may be either in advance or by ratification. The ratification of an act of an agent in order to bind the principal must be made with full knowledge of the nature of the act done on behalf of the principal. — *Quaik Siew Soon v. Wee Kim Guan*, (1887), 4 Kyshe, 319. The holder of a joint or joint and several note or other security is in dealing with the security affected by knowledge acquired even after taking the security as to which of the parties liable thereon is a principal and which is a surety. Where a creditor without any communication to the surety extends the time or makes any other binding agreement with the principal inconsistent with the terms of the original contract, the surety is discharged. But under certain circumstances the creditor may, while giving time to the principal, reserve his right against the surety. — *Chartered Mercantile Bank of India v. Letchman Chetty*, (1878), 1 Kyshe, 455. Where an instrument is on its face a joint and several note, but one of the parties thereto is in fact a surety, and such party pays the note, he is entitled to sue as a holder for value, although the note was not indorsed by the payee. — *Chinayah v. Williams*, (1891), 5 S. L. J. 26. A judgment against one of two joint makers of a promissory note is a bar to a subsequent action against the other. — *Mootia Chitty v. Andreu & Mousloy*, (1891), 5 S. L. J. 40. A note containing a stipulation "with interest at 12% per annum until payment" bears interest from its date. — *Haleemah v. Noordin*, (1870), Leicester, 277. In computing the time when an instrument is payable the day of making is excluded. — *Palaniapah Chitty v. Chokalingam*, (1892), 5 S. L. J. 66. The affixing of chops to a promissory note is a sufficient signature. — *Lim Guan Teet v. Shaik Ahmad Bashuib*, (1882), 1 Kyshe, 536; *Quaik Siew Soon v. Wee Kim Guan*, (1887), 4 Kyshe, 319. A partnership is liable to a bona fide holder on a promissory note chopped or stamped by a partner, although such chop or stamp is not the usual or genuine chop or stamp of the firm. — *Raman Chitty v. Ng Siang Eo*, (1904), 9 S. S. L. R. 90. Companies organized under the Companies Ordinance, 1889, must execute bills of exchange, promissory notes, cheques, and indorsements of such instruments in the manner

provided by that Ordinance. — Ord. No. 5 of 1889, § 68. An agreement to give a new promissory note of an equal or less amount than an existing one in satisfaction of such former note, is not binding, being without consideration. — *Schedunbrun Chitty v. Raman Chitty*, (1890), 3 S. L. J. 21; s. c. sub nom. *Shedumbrum Chetty v. Keng Cheow & Co.*, (1890), 4 Kyshe, 587. A promissory note given by a husband to a wife in consideration of the husband's antecedent failure to maintain the wife is not enforceable against the husband, nor against the executors of his estate. — *Cheah Boon Ean v. Cheah Chong Beng*, (1885), 4 Kyshe, 6. The indorsee of a negotiable instrument who takes it after maturity is affected by the illegality of the consideration for the instrument, although he took without actual notice thereof. — *Moothoo Raman Chetty v. Aik Kah Pai*, (1905), 9 S. S. L. R. 115. The question whether a promissory note given for an antecedent debt discharges such debt, or is simply for and on account of the debt, reviving the original debt upon non-payment of the note at maturity is a question of fact. This question is not affected by the fact that the holder negotiated the note to another party, at least not where the note is taken up at maturity by the person who so received it for the debt. The holder can in such case elect to sue on the original indebtedness. — *The Chow Phya*, (1874), 2 Kyshe (Adm.), 19. An accommodation note paid by the giving of a new note by the party accommodated at the maturity of the former note, and handed to the maker of the note, is discharged under § 59 (3), and being discharged, ceases to be negotiable under § 36. If such a note is subsequently transferred by the party his transferee holds a valueless non-negotiable instrument. *Seemle*, on such sale there is probably a warranty of genuineness and validity upon which the transferee may recover, but he can not sue on the note itself. — *Vayna Reyna Reena Peria Kurpen Chitty v. Ravena Mana Shoonaa Veerappa Chitty*, (1894), 3 S. S. L. R. 30. A promissory note payable in instalments, and providing that in the event of failure to pay any instalment the whole amount remaining unpaid shall become due, matures as to the whole of such unpaid balance on the failure to pay any instalment, even though the interest has been paid in advance for the entire period during which the note was to run. — *Palaniapah Chetty v. Hashim Nina Merican*, (1890), 4 Kyshe, 559. Such clauses are not in the nature of a penalty. — *M. T. A. Taynappa Chitty v. Wee Kah Poh*, (1900), 6 S. S. L. R. 32. The due date of a note payable in instalments, with a proviso that in default of payment of any instalment the whole amount of the unpaid balance becomes due, is the date when default is actually made. — *Moothoo Raman Chetty v. Aik Kah Pay*, (1905), 9 S. S. L. R. 115; overruling *Mootiah Chitty v. Mooto Curpen Chitty*, (1902), 8 S. S. L. R. 56. Presentation for payment means presentation in fact. The bringing of an action is not a presentation for payment, at least not within Ord. No. 8 of 1873, § 17. — *Lim Guan Teet v. Shaik Ahamad Bashaib*, (1882), 1 Kyshe, 536. Where a bill is materially altered after its issue, the instrument is avoided, except as against a party who assents to the alteration. Such assent must be clearly shown. — *Kana Pana Adeyappa Chitty v. A. M. Abdulrahman*, (1900), 6 S. S. L. R. 76.

Marine insurance — 6 Edw. 7, c. 41. The provisions of this Act are affected by Ord. No. 36 of 1907, 26, 27, reprinted *infra*. If the vessel insured is not seaworthy at the beginning of the voyage the policy never becomes operative. — *Coopan Chitty v. Bain*, (1862), Leicester, 170. The question of seaworthiness of a foreign vessel is determined by the law of the country to which the ship belongs. — *Verappa Chetty v. Ventre*, (1868), 1 Kyshe, 174; Leicester, 261. Where a policy is effected on a vessel for a certain number of voyages between certain ports within a stated period, and afterwards in consideration of extra premiums a license to deviate is given, and such license is stated to be on "three months' interest," but does not state that the license itself is limited to three months, the insurers are responsible for any loss by perils insured against, although the loss occurs while the vessel is on the voyage so specially permitted within the period of the original policy, but not within the three months provided for in the additional agreement. — *Verapah Chetty v. Lim Swee Choe*, (1874), 1 Kyshe, 378. In construing a Chetty insurance and mortgage bond containing a proviso that if the ship became an absolute total loss by foundering the defendant should be relieved from payment of such loan, but that if the loss occurred by any other peril, including collision, the loss to be borne by the defendant, it was held that where the vessel came into collision with another ship, and foundered within a few minutes, the defendant was relieved from his responsibility, on the ground that the proximate cause of the loss was the foundering, the collision being only a remote cause. — *A. M. K. Raman Chitty v. Chuah Eu Kay*, (1895), 4 S. S. L. R. 53. A cargo may be insured for an amount so as to cover, besides the actual value of the goods, the charges and profits, but the valuation for profits must be a reasonable one. An excessive valuation for profits is a fact material to the risk, and must be disclosed to the insurer. What is an excessive valuation is a question to be determined by a consideration of all the circumstances of the case. — *Tan Tye v. Union Ins. Co.*, (1879), 1 Kyshe, 482. There is no usage of trade applicable to Straits trading vessels trading between Singapore and Penang to touch at Malacca. Such touching will constitute a deviation where the vessel is insured only "for voyages between Singapore and Penang." — *Armoogum Chetty v. Lee Cheng Tee*, (1868), 1 Kyshe, 181.

b) No. 3 of 1911. An Ordinance to consolidate and amend the Law particularly affecting Labuan (9th March, 1911).

Law of the Colony to be in force in Settlement. 4. (1) Save as is by this or any other Ordinance provided the law for the time being in force in the Colony shall be in force in the Settlement of Labuan. (2) In construing written laws they shall be read with such formal alterations as to namens, localities, offices, persons, penalties, and otherwise as may be necessary to make the same applicable to the circumstances of the Settlement of Labuan.

By other sections certain Labuan Ordinances are declared to remain in force, and certain Straits Settlements Ordinances are declared not to be operative in Labuan. None of these Ordinance relates to matters within the scope of the present work.

Companies.

a) No. 5 of 1889. An Ordinance for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations (28th March, 1889).¹⁾

Preliminary.

Short title. 1. This Ordinance may be cited as *The Companies Ordinance, 1889.* Imp. § 295; F. M. S. § 1.

Repeal. 2. 1. On the commencement of this Ordinance the *Indian Companies Act, 1866*, together with all such (if any) provisions of any Imperial Act relating to Joint Stock Companies as may have been extended to this Colony by virtue of section six of *The Civil Law Ordinance, 1878* shall be repealed. But such repeal shall not affect table B in the Schedule annexed to Act No. 19 of 1857 or any part thereof so far as the same applies to any company existing at the commencement of this Ordinance. 2. All references to the said *Indian Companies Act, 1866*, in Ordinances or Orders in Council passed before the commencement of this Ordinance shall be read as if made to this Ordinance; and all rules made, fees directed, resolutions passed, and other things duly done under the same Act shall be deemed to be respectively made, directed, passed, and done under this Ordinance; and all companies under the same Act shall be deemed to be companies under this Ordinance. 3. Nothing in section 6 of *The Civil Law Ordinance, 1878*, shall have or be deemed to have the effect of extending to this Colony any enactment of the Imperial Parliament passed after the commencement of this Ordinance with respect to joint stock companies.

Imp. § 286.

Interpretation clause. 3. In this Ordinance unless there be something repugnant in the subject or context: "Insurance company" means a company that carries on the business of insurance, either solely or in common with any other business or businesses. "Court" means the Supreme Court. "Liquidator" includes official liquidator.

Imp. § 285; F. M. S. § 2.

Prohibition of partnerships exceeding certain number. 4. No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Ordinance, or is formed in pursuance of some statutory or other enactment having the force of law in the Colony or by Royal Charter or letters patent; and no company, association, or partnership, consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Ordinance, or is formed in pursuance of some statutory or other enactment having the force of law in the Colony or by Royal Charter or letters patent.

Imp. § 1; F. M. S. § 3. The Banque de l'Indo-Chine is specially empowered to take and hold moveable and immoveable property, and to sue and be sued. Deeds signed by the manager

¹⁾ The references in the notes are to the corresponding sections in (Imp.) the Imperial *Companies (Consolidation) Act, 1908*, (8 Edw. 7. c. 69) and (F. M. S.) the companies enactments of Perak, Selangor, Negri Sembilan, and Pahang, *infra*.

are valid as if sealed with the company's seal. — Ord. No. 5 of 1905. Special ordinances also exist in reference to the Nederlandsch-Indische Handelsbank (Ord. No. 15 of 1904), the Hongkong and Shanghai Bank (Ords. No. 10 of 1881, No. 3 of 1899, No. 11 of 1899, and No. 12 of 1900), the Tanjong Pagar Dock Co. (Ord. No. 15 of 1890), and the Nederlandsche Handel-Maatschappij (Ord. No. 3 of 1892). A money loan association consisting of more than twenty members, and lending money to its members, may not be an illegal organization with the meaning of this section — *Soh Hood Beng v. Khoo Chye Neo*, (1896), 4 S. S. L. R. 115.

Division of Ordinance. 5. This Ordinance is divided into nine Parts, relating to the following subject matters: The first Part to the constitution and incorporation of companies and associations under this Ordinance. The second Part to the distribution of the capital and liability of members of companies and associations under this Ordinance. The third Part to the management and administration of companies and associations under this Ordinance. The fourth Part to the winding-up of companies and associations under this Ordinance. The fifth Part to the registration office. The sixth Part to the application of this Ordinance to companies registered under Indian Act No. 19 of 1857 (for the incorporation and regulation of joint stock companies and other associations, either with or without limited liability of the members thereof). The seventh Part to companies authorized to register under this Ordinance. The eighth Part to the application of this Ordinance to unregistered companies. The ninth Part to miscellaneous provisions.

F. M. S. § 4.

Part I. Constitution and Incorporation of Companies and Associations under this Ordinance.

Memorandum of association.

Mode of forming company. 6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this Ordinance in respect of registration, form an incorporated company, with or without limited liability.

Imp. § 2; F. M. S. § 5.

Mode of limiting liability of members. 7. 1. The liability of the members of a company formed under this Ordinance may, according to the memorandum of association, be limited either to the amount (if any) unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up. 2. Where a company is formed as a limited company the liability of the directors or managers of such company or of the managing director may, if so provided by the memorandum of association be unlimited.

Imp. § 3; F. M. S. § 6.

Memorandum of association of a company limited by shares. 8. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares (hereinafter referred to as a company limited by shares) the memorandum of association shall contain the following things, that is to say: a) The name of the proposed company, with the addition of the word "Limited" as the last word in such name; b) The Settlement in which the registered office of the company is proposed to be situate; c) The objects for which the proposed company is to be established; d) A declaration that the liability of the members is limited; e) The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount; Subject to the following regulations: f) That no subscriber shall take less than one share; g) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Imp. § 4; F. M. S. § 8.

Memorandum of association of a company limited by guarantee. 9. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up (hereinafter referred to as a company limited by guarantee) the memorandum of association shall contain the following things, that is to say: a) The name of the proposed company, with the addition of the word "Limited" as the last word in such name; b) The Settlement in which the registered office of the company is proposed to be situate; c) The objects for which the proposed company is to be established; d) A declaration that each member undertakes to contribute to the assets of the company in the

event of the same being wound up during the time that he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member and of the costs, charges, and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Imp. § 4; F. M. S. § 8.

Memorandum of association of an unlimited company. 10. Where a company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as an unlimited company) the memorandum of association shall contain the following things, that is to say: a) The name of the proposed company; b) The Settlement in which the registered office of the company is proposed to be situate; c) The objects for which the proposed company is to be established.

Imp. § 5; F. M. S. § 9.

Signature and effect of memorandum of association. 11. The memorandum of association shall be signed by each subscriber in the presence of and be attested by one witness at the least. It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name thereto and there were in the memorandum contained on the part of himself, his heirs, executors, and administrators a covenant to observe all the conditions of such memorandum subject to the provisions of this Ordinance.

Imp. § 14; F. M. S. § 10.

Power of certain companies to alter memorandum of association. 12. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock; but save as aforesaid, and save as hereinafter provided, no alteration shall be made by any company in the conditions contained in its memorandum of association.

Imp. § 8; F. M. S. § 11.

Reduction of capital and shares.

Power to company to reduce capital. 13. 1. Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the Registrar of Joint Stock Companies as is hereinafter mentioned. 2. The word "capital" as used in this section includes paid-up capital. 3. The power to reduce capital conferred by this section includes a power to cancel any lost capital or any capital unrepresented by available assets or to pay off any capital which may be in excess of the wants of the company, and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company; and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved, notwithstanding anything hereinafter contained.

Imp. § 46; F. M. S. § 12.

Company to add "and reduced" to its name for a limited period. 14. The company shall after the date of the passing of any special resolution for reducing its capital add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name and those words shall, until such date, be deemed to be part of the name of the company.

Imp. § 48; F. M. S. § 13.

Company to apply to Court for an order confirming reduction. 15. 1. A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and on the hearing of the petition the Court, if satisfied that with respect to every creditor of the company who under the provisions of this Ordinance is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems

fit. 2. When the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, the creditors of the company shall not, unless the Court otherwise directs, be entitled to object or required to consent to the reduction, and it shall not be necessary before the presentation of any petition under this section to add, and the Court may, if it thinks fit so to do, dispense with the addition of the words "and reduced." 3. In any case that the Court thinks fit so to do, it may require the company to publish in such manner as the Court thinks fit the reasons for the reduction, or such other information regarding the same as the Court may think expedient with a view to give proper information to the public in relation to such reduction, and if the Court thinks fit, the cause which led thereto.

Imp. §§ 48, 55; F. M. S. § 14.

Creditors may object to reduction, and list of objecting creditors to be settled by Court. 16. 1. Where a company proposes to reduce its capital, every creditor of the company, who, at the date fixed by the Court, is entitled to any debt or claim, which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall, subject to the provisions of subsection (2) of the last preceding section, be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object. 2. The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction.

Imp. § 49; F. M. S. § 15.

Court may dispense with consent of creditor on security being given for his debt.

17. Where a creditor whose name is entered on the list of creditors and whose debt or claim is not discharged or determined, does not give his consent to the proposed reduction, the Court may, if it thinks fit, dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the Court may direct a sum of such amount as is hereinafter mentioned, that is to say: a) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated; b) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, inquire into and adjudicate upon the validity of such debt or claim and the amount for which the company may be liable in respect thereof in the same manner as if the company were being wound up by the Court; and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

Imp. § 49; F. M. S. § 16.

Order and minute to be registered. 18. 1. The Registrar of Joint Stock Companies upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court) showing, with respect to the capital of the company as altered by the order, the amount of such capital, the number of shares in which it is to be divided and the amount of each share, and the amount, if any, at the date of the registration of the minute proposed to be deemed to have been paid up on each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect. 2. Notice of such registration shall be published in such manner as the Court may direct. 3. The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Ordinance with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

Imp. § 51; F. M. S. § 17.

Minute to form part of memorandum of association. 19. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and

subject to the same alterations as if it had been originally contained in the memorandum of association; and subject as in this Ordinance mentioned, no member of the company whether past or present shall be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Imp. § 52; F. M. S. § 18.

Saving of rights of creditors who are ignorant of proceedings. 20. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Ordinance, is, in consequence of his ignorance of the proceedings taken with a view to such reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of this Ordinance, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of its capital shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and on the company being wound up the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up, but nothing in this section shall affect the rights of the contributories of the company among themselves.

Imp. § 53; F. M. S. § 19.

Registered minute to be embodied in memorandum of association. 21. A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding five dollars for each copy in respect of which such default is made; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 52; F. M. S. § 20.

Penalty on concealment of name of creditor. 22. If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company abets within the meaning of the Penal Code any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be punished with imprisonment for a term not exceeding one year, or with fine, or with both.

Imp. § 54; F. M. S. § 21.

Power to reduce capital by cancellation of unissued shares. 23. Any company limited by shares may so far modify the conditions contained in its memorandum of association if authorized so to do by its regulations as originally framed, or as altered by special resolution as to reduce its capital by cancelling any shares which at the date of passing such resolution have not been taken or agreed to be taken by any persons; and the provisions as to reduction of capital contained in the other sections of this Ordinance shall not apply to any reduction made in pursuance of this section.

Imp. § 41; F. M. S. § 22.

Subdivision of shares.

Shares may be divided into shares of smaller amount. 24. 1. Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution as by subdivision of its existing shares or any of them, to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association. 2. [As amended by Ord. No. 14 of 1909, § 2.] Provided that in the subdivision of the existing shares the proportion between the amount which is paid and the amount, if any, which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Imp. § 41 (1, 2); F. M. S. § 23. See Ord. No. 14 of 1909, *infra*.

Special resolution to be embodied in memorandum of association. 25. The statement of the number and amount of the shares into which the capital of the company is divided contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding five dollars for each copy in respect of which such default is made; and every director and manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 41 (3); F. M. S. § 24. See Ord. No. 14 of 1909, *infra*.

Associations not for profit.

[26. Relates to companies formed for purposes not of gain.]

Accumulated profits may be returned to shareholders.

Accumulated profits may be returned to shareholders in reduction of paid-up capital. 27. When any company has accumulated a sum of undivided profits which with the consent of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the company by special resolution to return the same or any part thereof to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount. The powers vested in the directors of making calls upon the shareholders in respect of moneys unpaid upon their shares shall extend to the amount of the unpaid capital as augmented by such reduction. Provided that no such special resolution as aforesaid shall take effect until a memorandum showing the particulars required by law in the case of a reduction of capital by order of the Court shall have been produced to and registered by the Registrar of Joint Stock Companies.

Imp. § 40; F. M. S. § 26.

Shareholders may require company to retain moneys paid upon shares held by them. 28. Upon any reduction of paid-up capital made in pursuance of the last section by the return to the shareholders of accumulated profits, it shall be lawful for any shareholder or for any one or more of several joint shareholders within one month after the passing of the special resolution to require the company to retain, and the company shall retain accordingly, the whole of the moneys actually paid up on the shares held by such person, either alone or jointly with any other person or persons, and which in consequence of such reduction would otherwise be returned to him or them, and thereupon the shares in respect of which the said moneys shall be so retained shall in regard to the payment of dividends thereon be deemed to be paid up to the same extent only as the shares on which payment as aforesaid has been accepted by the shareholders in reduction of their paid-up capital, and the company shall invest and keep invested the moneys so retained in such securities authorized for investment by trustees as the company shall determine, and upon the money so invested or upon so much thereof as from time to time exceeds the amount of calls subsequently made upon the shares in respect of which such moneys shall have been retained, the company shall pay such interest as shall be received by them from time to time on such securities, and the amount so retained and invested shall be held to represent the future calls which may be made to replace the capital so reduced on those shares whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of such call.

Imp. § 40; F. M. S. § 27.

Companies to specify amounts which shareholders have required them to retain, and also amounts of profits retained. 29. From and after such return to the shareholders of accumulated profits, the company shall specify in the annual list and summary of members to be forwarded to the Registrar of Joint Stock Companies, in pursuance of this Ordinance, the amounts which any of the shareholders of the company shall have required the company to retain, and the company shall have retained accordingly, and the company shall also specify in the statements of account laid before any general meeting of the company the amount of the undivided profits of the company which shall have been returned to the shareholders in reduction of the paid-up capital of the company.

Imp. § 40; F. M. S. § 28.

Calls upon shares.

Company may have some shares paid and others not. 30. Nothing herein contained shall be deemed to prevent any company under this Ordinance, if authorized by its regulations as originally framed, or as altered by special resolution from doing any one or more of the following things, namely: a) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls; b) Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him, or without any call having been made; c) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Imp. § 39; F. M. S. § 29.

Manner in which shares are to be issued and held. 31. Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the method of payment has been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint Stock Companies at or before the issue of such shares.

F. M. S. § 30. See Ord. No. 4 of 1909, *infra*.

Transfer of shares.

Transfer may be registered at request of transferor. 32. A company shall on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Imp. § 28; F. M. S. § 31.

Share warrants to bearer.

Warrant of limited shares fully paid up may be issued in name of bearer; effect of share warrant. 33. 1. In the case of a company limited by shares, the company, if authorized so to do by its regulations as originally framed, or as altered by special resolution, and subject to the provisions of such regulations may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant (hereinafter referred to as a share warrant), stating that the bearer thereof is entitled to the shares or stock therein specified, and may provide by coupons or otherwise for the payment of the future dividends on such shares or stock. 2. A share warrant shall entitle the bearer thereof to the shares or stock specified therein; and such shares or stock may be transferred by the delivery of the share warrant.

Imp. § 37; F. M. S. § 32. See § 51, *infra*. Cp. *Fraser v. Everett*, (1889), 4 Kyshe, 512; 2 S. L. J. 81.

Re-registration of bearer of a share warrant in the register. 34. The bearer of a share warrant shall, subject to the regulations of the company, be entitled on surrendering such warrant for cancellation to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein, without the share warrant being surrendered and cancelled.

Imp. § 37; F. M. S. § 33.

Regulations of the company may make the bearer of a share-warrant a member. 35. 1. The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of this Ordinance, either to the full extent, or for such purposes as may be prescribed by the regulations. 2. Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company, in cases where such a qualification is prescribed by the regulations of the company.

Imp. § 37; F. M. S. § 34.

Entries in register where share warrant issued. 36. On the issue of a share warrant in respect of any share or stock, the company shall strike out of its register of members the name of the member then entered therein as holding such share

or stock as if he had ceased to be a member, and shall enter in the register the following particulars: a) The fact of the issue of the warrant; b) A statement of the shares or stock included in the warrant, distinguishing each share by its number; c) The date of the issue of the warrant.

Imp. § 37; F. M. S. § 35.

Stamps on share warrant; penalty for issuing share-warrant not duly stamped.

37. 1. There shall be charged on every share warrant a stamp duty of an amount equal to three times the amount of the stamp duty which would be chargeable on an instrument transferring the shares or stock specified in the warrant. 2. If a share warrant is issued without being duly stamped, the company issuing the same and also every person who at the time when it is issued is the managing director or secretary or other principal officer of the company, shall forfeit the sum of two hundred and fifty dollars.

F. M. S. § 36.

Change of name.

Power of company to change name. **38.** Any company under this Ordinance, with the sanction of a special resolution of the company, passed in manner herein-after mentioned, and with the approval of the Governor in Council testified in writing under the hand of the Colonial Secretary, may change its name; and upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company; and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8; F. M. S. § 37.

Articles of association.

Regulations to be prescribed by articles of association. **39.** 1. The memorandum of association may in the case of a company limited by shares, and shall in the case of a company limited by guarantee or unlimited, be accompanied when registered by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. 2. The articles shall be expressed in separate paragraphs, numbered consecutively. They may adopt all or any of the provisions contained in the Table marked A in the first Schedule hereto. They shall, in the case of a company whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered, and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered for the purpose of enabling the Registrar to determine the fees payable on registration. 3. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Imp. § 10; F. M. S. § 38.

Application of Table A. **40.** In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the Table marked A in the first Schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Imp. § 11; F. M. S. § 39.

Signature and effect of articles of association. **41.** 1. The articles of association shall be printed, and shall be signed by each subscriber in the presence of and be attested by one witness at the least. 2. When registered they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and as if there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators to conform to all the regulations contained in such articles, subject to the provisions of

this Ordinance. 3. All moneys payable by any member to the company in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company, and to be in the nature of a specialty debt.

Imp. § 12; F. M. S. § 40.

General provisions.

Registration of memorandum of association and articles of association, with fees, as in Table C. 42. 1. The memorandum of association and the articles of association, if any, shall be delivered to the Registrar of Joint Stock Companies hereinafter mentioned, who shall retain and register the same. 2. There shall be paid to the Registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the Table marked B in the first Schedule hereto, the several fees therein specified, or such smaller fees as the Governor in Council may from time to time direct, and by a company not having a capital divided into shares in respect of the several matters mentioned in the Table marked C in the first Schedule hereto the several fees therein specified, or such smaller fees as the Governor in Council may from time to time direct.

Imp. § 15; F. M. S. § 41.

Effect of registration. 43. 1. Upon the registration of the memorandum of association and of the articles of association, in cases where articles of association are required by this Ordinance, or by the desire of the parties to be registered, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company, that the company is limited, and thereupon the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as hereinafter mentioned. 2. A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requisitions of this Ordinance in respect of registration have been complied with.

Imp. § 16; F. M. S. § 42.

Copies of memorandum and articles to be given to members. 44. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member at his request, on payment of such sum not exceeding fifty cents as may be prescribed by the company for each copy; and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the company so making default shall for each such offense incur a penalty not exceeding five dollars.

Imp. § 18; F. M. S. § 43.

Prohibition against identity of names in companies. 45. 1. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved, and testifies its consent in such manner as the Registrar requires. 2. If a company through inadvertence or otherwise is without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company, may, with the sanction of the Registrar, change its name; and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation, altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Imp. § 8; F. M. S. § 44.

[46. Relates to the holding of land by certain non-trading companies.]

Prospectus.

Prospectus, etc., to specify dates and names of parties to certain prior contracts.

47. 1. Every prospectus of a company and every notice inviting persons to subscribe for shares in any company, shall specify the date and the names of the parties to any contract which has been entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice (whether subject to adoption by the directors or the company or otherwise), and which might reasonably influence a person in determining whether he would or would not become a shareholder in the company; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, trustees and officers of the company knowingly issuing the same as regards any person taking shares in the company on the faith of such prospectus, unless he has had actual notice of such contract. 2. This section extends to every contract made with a person who afterwards become a promoter or director, provided the company have become entitled to the benefit of the contract, or have become liable to perform the provisions of the contract before the prospectus was issued. 3. A copy of every such prospectus or notice, dated and signed by every director present in the Colony at the date of its issue shall be forthwith forwarded to the Registrar of Joint Stock Companies, and recorded by him, and if such copy is not so forwarded within fourteen days from the date of the issue thereof, the company shall incur a penalty not exceeding ten dollars for every day after the expiration of fourteen days during which such copy is omitted to be forwarded; and every director or manager of the company who permits such default shall incur the like penalty, but so that no person shall be liable to pay more than five hundred dollars.

Imp. §§ 81—84; F. M. S. § 47.

Part II. Distribution of Capital and Liability of Members of Companies and Associations under this Ordinance.

Distribution of capital.

Nature of interest in company. **48.** The shares or other interest of any member in a company under this Ordinance shall be personal estate, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate, and each share shall, in the case of a company having a capital divided into shares be distinguished by its appropriate number.

Imp. § 22; F. M. S. § 47. A share is the definite portion of the capital of the company to which the owner of such share is entitled. The word scrip as used in contracts for the sale of shares is not confined to scrip issued before allotment, but includes share certificates. The delivery of certified transfers entitling the holder to registration in London is not the equivalent of delivery of scrip at Singapore, within the meaning of a contract for the sale of shares in a company. — *Heim v. Lim Tiang Hee*, (1889), 4 Kyshe, 465. A statement to the effect that a company is in a sound financial position, and that large profit will accrue from a purchase of shares, made with actual knowledge of the fact that the company has suspended payment, which fact was unknown to the other party, is such fraud as will vitiate a contract for the sale of shares. The damages for the breach of a contract for the sale of shares is, in ordinary cases, the difference between the contract price and the market price. — *Simons v. Teo Guan Tye*, (1889), 4 Kyshe, 544; 2 S. L. J. 98. Where a broker sells a number of distinct sets of shares, as agent for several distinct principals, to a single purchaser, and only one document is drawn up, which is signed by the broker as agent, and the purchaser though knowing that the broker was contracting in a representative capacity, did not inquire who the principals were, or how the total number of shares was made up, it was held (per Wood, J.) that there were three distinct contracts on the one paper, and that each of the principals had the right to sue on his own account. On appeal, the Court (Pellereau, J. and O'Malley, C. J.) being evenly divided, the judgment below was affirmed. — *Carr v. Teo Guan Tye*, (1890), 4 Kyshe, 561. Parol evidence is admissible to show that a written agreement to deliver and pay for shares in a company at a future time does not, owing to a mistake, represent truly the terms of the contract between the parties. And where evidence of the mistake is clear, the document will be rectified. — *Lim Ah Sam v. Lim Tay Lin*, (1889), 2 S. L. J. 94. A contract providing for the sale of "transfer and scrip" is not performed by the delivery of a bearer warrant. See this case as to what is a reasonable time for the delivery of shares. — *Fraser v. Everott*, (1889), 4 Kyshe, 512; 2 S. L. J. 81. As to the interpretation of a memorandum of a sale of shares, see *Lim Eng Yong v. Lim Chin Swee*, (1897), 5 S. S. L. R. 4. (Cp. *Fraser & Co., v. Tan Hay Seng*, (1899), 1 S. L. J. 143. The stamp duties payable on the transfer of shares are regulated by the *Stamp Duties Ordinance, 1907*, as follows: A certificate or other document evidencing the right or title of the holder thereof or any other person either to any shares, scrip, or stock in or of any company, or to become proprietor of any shares,

scrip, or stock in or of any company or association, is subject to a stamp duty of 4 cents. The conveyance, assignment, or transfer of shares in a company, whether on sale or otherwise, to be computed on the price or value thereof on date of the transfer of such shares, for every \$ 100 or fractional part of \$ 100, a) when the name of the transferee is filled in prior to the execution of the transfer by the transferor, 10 cents; b) when the name of the transferee is not filled in prior to the execution of the transfer by the transferor (commonly called "a blank transfer"), 30 cents. A letter of allotment and letter of renunciation, or any document having the effect of a letter or allotment of shares in any company or proposed company, or in respect of any loan raised or proposed to be raised by any company or proposed company, is subject to a stamp duty of 5 cents. A share warrant or stock certificate to bearer is subject to a stamp duty of an amount equal to three times the amount of the ad valorem duty which would be chargeable on an instrument transferring the share, or shares, or stock specified in the warrant. — Ord. No. 36 of 1907, Sched. I.

Definition of member. 49. The subscribers of the memorandum of association of any company under this Ordinance shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and on the registration of the company, shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed with a company under this Ordinance to become a member of such company, and whose name is entered on the register of members, shall be deemed to be a member of the company.

Imp. § 24; F. M. S. § 48.

Transfer by personal representative. 50. Any transfer of the share or other interest of a deceased member of a company under this Ordinance made by his personal representative shall notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Imp. § 29; F. M. S. § 49.

Register of members. 51. 1. Every company under this Ordinance shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars: a) The names and addresses and the occupations, if any, of the members of the Company, with the addition in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member; b) The date at which the name of any person was entered in the register as a member; c) The date at which any person ceased to be a member. 2. Where a share warrant has been issued under section thirty-three, until the warrant is surrendered, the particulars mentioned in section thirty-six shall be deemed to be the particulars which are required by this section to be entered in the register of members of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member. 3. Any company acting in contravention of this section shall incur a penalty not exceeding twenty-five dollars for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company who knowingly and wilfully authorizes or permits such contravention shall incur the like penalty.

Imp. § 25; F. M. S. § 50.

Annual list of members. 52. 1. Every company under this Ordinance, and having a capital divided into shares, shall make once at least every year a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the company. Such list shall state the names and addresses and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars: a) The amount of the capital of the company, and the number of shares into which it is divided; b) The number of shares taken from the commencement of the company up to the date of the summary; c) The amount of calls made on each share; d) The total amount of calls received; e) The total amount of calls unpaid; f) The total amount of shares forfeited; g) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them. 2. After the issue by the company of a share warrant, the annual summary required by this section shall contain the following particulars, namely: the total amount of shares or stock for which share warrants are outstanding at the date of the summary, and the total amount of share warrants which

have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant. 3. The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day, as is mentioned in this section; and a copy shall forthwith be forwarded to the Registrar of Joint Stock Companies.

Imp. § 26; F. M. S. § 51.

Penalty on company, etc., not keeping a proper register. 53. If any company under this Ordinance, and having a capital divided into shares makes default in complying with the provisions of this Ordinance with respect to forwarding to the Registrar such list of members or summary as is hereinbefore mentioned, such company shall incur a penalty not exceeding twenty-five dollars for every day during which such default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 26; F. M. S. § 52.

Company to give notice of consolidation or of conversion of capital into stock.

54. Every company under this Ordinance having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing share or converted any portion of its capital into stock, shall within fifteen days of such consolidation, division, or conversion give notice to the Registrar of Joint Stock Companies of the same, specifying the shares so consolidated, divided, or converted.

Imp. § 42; F. M. S. § 53.

Effect of conversion of shares into stock. 55. Where any company under this Ordinance, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this Ordinance which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the Registrar shall show the amount of stock held by such member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

Imp. § 43; F. M. S. § 54.

Entry of trust on register. 56. No notice of any trust, express, implied, or constructive, shall be entered on the register or be receivable by the Registrar in the case of companies under this Ordinance.

Imp. § 27; F. M. S. § 55.

Certificate of shares or stock. 57. A certificate under the common seal of the company, specifying any shares or stock held by any member of a company, shall be prima facie evidence of the title of the member to the share or shares or stock therein specified.

Imp. § 23; F. M. S. § 56.

Inspection of register. 58. 1. The register of members, commencing from the date of registration of the company, shall be kept at the registered office of the company hereinafter mentioned. Except when closed, as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of fifty cents, or such less sum as the company may prescribe for each inspection. 2. Every such member or other person may require a copy of such register, or any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of fifteen cents for every hundred words required to be copied. 3. If such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding ten dollars, and a further penalty not exceeding ten dollars for every day during which such refusal continues, and every director and manager of the company who knowingly authorizes or permits such refusal shall incur the like penalty. 4. In addition to the above penalty, any Judge of the Supreme Court may by order compel an immediate inspection of the register.

Imp. § 30; F. M. S. § 57.

Power to close register. 59. Any company under this Ordinance may, upon giving notice by advertisement in some newspaper circulating in the Settlement in which the registered office of the company is situate, and in the *Government Gazette*, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Imp. § 31; F. M. S. § 58.

Notice of increase of capital and of members to be given to Registrar. 60. 1. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number shall be given to the Registrar, in the case of an increase in capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members. 2. If such notice is not given within the period aforesaid, the company in default shall incur a penalty not exceeding fifty dollars for every day during which such neglect to give notice continues; and every director or manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 44; F. M. S. § 59.

Remedy for improper entry or omission of entry in register. 61. 1. If the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members kept by any company under this Ordinance, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself may apply to the Court or a judge for an order of the Court that the register may be rectified; and the Court or judge may either refuse such application, with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, make an order for rectification of the register, and may direct the company to pay all the costs of such application, and any damages the party aggrieved may have sustained. 2. The Court may in any proceeding under this section decide any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and whether there has or has not been default on the part of the company, and generally may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register.

Imp. § 32; F. M. S. § 60.

Notice to Registrar of rectification of register. 62. Whenever any order has been made for rectifying the register in the case of a company hereby required to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Imp. § 32; F. M. S. § 61.

Register to be evidence. 63. The register of members shall be prima facie evidence of any matters by this Ordinance directed or authorized to be inserted therein.

Imp. § 33; F. M. S. § 62.

Liability of members.

Liability of present and past members of company. 64. In the event of a company under this Ordinance being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company and the costs and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, that is to say: a) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up; b) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member; c) No past member shall be liable to contribute to the assets of the company, unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance; d) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member; e) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered

into on his behalf by the memorandum of association; f) Nothing in this Ordinance contained shall invalidate any provision contained in any policy of insurance or other contract, whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract; g) No sum due to any member of a company in his character of a member by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor, not being a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories amongst themselves.

Imp. § 123; F. M. S. § 63.

Liability of director whose liability is unlimited. 65. With respect to the contributions to be required in the event of the winding-up of a limited company from any director or manager whose liability is unlimited, the following modifications shall be made in the last preceding section: a) Subject to the provisions hereinafter, contained, any such director or manager, whether past or present, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited company; b) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount, if any, which he is liable to contribute as an ordinary member of the company; c) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office, shall exceed the amount, if any, which he is liable to contribute as an ordinary member of the company; d) Subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount, if any, which he is liable to contribute as an ordinary member, unless the Court thinks necessary to require such contribution in order to satisfy the debts and liabilities of the company, or the costs, charges, and expenses of the winding-up.

Imp. § 123; F. M. S. § 64. The promoters and directors of a company stand in a fiduciary position toward the company. In purchasing property from the company they must disclose all information they may have in regard to such property. If they fail to do so, the shareholders may recover back the property from such directors or from any person who purchased the same from the directors with knowledge of the circumstances. — *Habib Abdul Rahman v. Abdul Cader*, (1886), 4 Kyshe, 193.

Part III. Management and Administration of Companies and Associations under this Ordinance.

Provisions for protection of creditors.

Registered office of company. 66. Every company under this Ordinance shall have a registered office to which all communications and notices may be addressed. If any company under this Ordinance carries on business without having such an office, it shall incur a penalty not exceeding twenty-five dollars for every day during which business is so carried on, and every director or manager of the company who is party or privy to the company so carrying on business shall incur the like penalty.

Imp. § 62; F. M. S. § 65.

Notice of situation of registered office. 67. Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him. Until such notice is given, the company shall not be deemed to have complied with the provisions of this Ordinance with respect to having a registered office.

Imp. § 62; F. M. S. § 66.

Publication of names by a limited company. 68. Every limited company under this Ordinance, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, in the English language, and shall have its name engraven in legible characters in such language on its seal, and shall have its name mentioned in legible characters in such language in all notices, advertisements, and other

official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Imp. § 63; F. M. S. § 67.

Penalty on non-publication of name. 69. 1. If any limited company under this Ordinance does not paint or affix, and keep painted or affixed, its name in manner directed by this Ordinance, it shall be liable to a penalty not exceeding twenty-five dollars for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty. 2. If any director, manager, or officer of such company, or any person on its behalf uses or authorizes the use of any seal purporting to be a seal of the company, whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such company, or signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of five hundred dollars, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Imp. § 63; F. M. S. § 68.

Contracts.

Contracts how made. 70. Contracts on behalf of any company under this Ordinance may be made as follows, that is to say: a) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company; and such contract may be in the same manner varied or discharged; b) Any contract, which, if made between private persons, would be by law required to be in writing, signed, by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company; and such contract may in the same manner be varied or discharged; c) Any contract, which if made between private persons, would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company; and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be.

Imp. § 76; F. M. S. § 69.

Register of mortgages. 71. 1. Every limited company under this Ordinance shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. 2. If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly or wilfully authorizes or permits the omission of such entry, shall incur a penalty not exceeding two hundred and fifty dollars. 3. The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times. If such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding twenty-five dollars, and a further penalty not exceeding ten dollars for every day during which such refusal continues, and in addition to the above penalty any judge of the Supreme Court sitting in chambers may by order compel an immediate inspection of the register.

Imp. §§ 100—102; F. M. S. § 10.

[72. Relates to statements by banking and insurance companies, and deposit, provident, and benefit societies.]

List of directors to be sent to Registrar. Penalty on company not keeping register of directors. 73. 1. Every company under this Ordinance, and not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Joint Stock Companies a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers. 2. If any such company makes default in keeping a register of its directors or managers or in sending a copy of such register to the Registrar, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding fifty dollars for every day during which such default continues; and every director or manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 75; F. M. S. § 71.

Promissory note and bill of exchange. 74. A promissory note or bill of exchange shall be deemed to have been drawn, accepted, or endorsed on behalf of any company under this Ordinance if made, drawn, accepted, or endorsed in the name of the company by any person acting under the authority of the company, or if made, drawn, accepted, or endorsed by or on behalf or on account of the company by any person acting under the authority of the company.

Imp. § 77; F. M. S. § 72.

Prohibition against carrying on business with less than seven members. 75. If any company under this Ordinance carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debt of the company contracted during such time, and may be sued for the same without the joinder in the suit of any other member.

Imp. § 115; F. M. S. § 73.

Provisions for protection of members.

General meeting of company; balance sheet; audit. 76. 1. A general meeting of every company under this Ordinance shall be held once at the least in every year. 2. A balance sheet shall be made out and filed with the Registrar of Joint Stock Companies within fifteen months after the company has been registered, and once at least in every year afterwards; and such balance sheet shall contain a summary of the property and liabilities of the company, arranged under the heads appearing in the form annexed to table A in the first Schedule hereto, or as near thereto as circumstances admit. 3. And once at least in every year the accounts of the company shall be examined, and the correctness of the last balance sheet and its conformity with the law ascertained, and certified by one or more auditor or auditors. 4. If default is made in compliance with any of the provisions of this section, every director or manager of the company who knowingly and wilfully authorizes or permits such default shall be liable to a penalty of five hundred dollars.

Imp. § 64; F. M. S. § 74.

Company to hold meeting within six months after registration. 77. Every company formed under this Ordinance after the commencement of this Ordinance shall hold a general meeting within six months after its memorandum of association is registered; and if such meeting is not held, the company shall be liable to a penalty not exceeding twenty-five dollars a day for every day after the expiration of such six months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association who knowingly authorizes or permits such default shall be liable to the same penalty.

Imp. § 65; F. M. S. § 75.

Power to alter regulations by special resolution. 78. Subject to the provisions of this Ordinance, and to the conditions contained in the memorandum of association, any company formed under this Ordinance, or the *Indian Companies Act, 1866*, may in general meeting from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained

in the articles of association, or in the table marked A in the first Schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company, and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Imp. § 13; F. M. S. § 76.

Power to alter memorandum of association so as to make liability of directors unlimited. 79. Any limited company formed under this Ordinance, or the *Indian Companies Act, 1866*, may by a special resolution, if authorized to do so by its regulations as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited from and after the date of such resolution the liability of its directors or managers or of the managing director, and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution.

Imp. § 61; F. M. S. § 77.

Definition of special resolution. 80. 1. A resolution passed by a company under this Ordinance shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present in person or by proxy (in cases where, by the regulations of the company, proxies are allowed) at any general meeting of which notice, specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote as may be present in person or by proxy at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed. 2. At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried, shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. 3. Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given, and meeting held in manner prescribed by the regulations of the company. 4. In computing the majority under this section when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

Imp. § 69; F. M. S. § 78.

Provision where no regulation as to meetings. 81. 1. In default of any regulations as to voting, every member shall have one vote, and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first Schedule hereto. 2. In default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Imp. § 67; F. M. S. § 79.

Registration of special resolutions. 82. 1. A copy of every special resolution that is passed by any company under this Ordinance shall be printed and forwarded to the Registrar of Joint Stock Companies, and be recorded by him. 2. If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding ten dollars for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director or manager of the company who knowingly and wilfully authorizes or permits such default, shall incur the like penalty.

Imp. § 70; F. M. S. § 80.

Copies of special resolutions to be embodied in articles of association. 83. 1. Where articles of association have been registered, a copy of every special resolution for the

time being in force shall be annexed to or be embodied in every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of every special resolution shall be forwarded in print to any member requesting the same, on payment of fifty cents, or such less sum as the company may direct. 2. If any company makes default in complying with the provisions of this section, or of section seventy-six, it shall incur a penalty not exceeding ten dollars for each copy in respect of which such default is made; and every director or manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Imp. § 70; F. M. S. § 81.

Execution of deeds abroad. 84. Any company under this Ordinance may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place not situate in the Colony; and every deed signed by such attorney on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Imp. § 78; F. M. S. § 82.

Examination of affairs of company by inspectors. 85. The Governor may appoint one or more competent inspector or inspectors to examine into the affairs of any company under this Ordinance, and to report thereon in such manner as he may direct upon the applications following, that is to say: a) In the case of a banking or any other company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued; b) In the case of a company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

Imp. § 109; F. M. S. § 83.

Application for inspection to be supported by evidence. 86. 1. The application shall be supported by such evidence as the Governor may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same. 2. The Governor may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Imp. § 109; F. M. S. § 84.

Inspection of books. 87. 1. It shall be the duty of all officers and agents of the company to produce, for the examination of the inspectors, all books and documents in their custody or power. 2. Any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. 3. If such officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding fifty dollars in respect of each such offence.

Imp. § 109; F. M. S. § 85.

Result of examination, how dealt with. 88. 1. Upon the conclusion of the examination the inspectors shall report their opinions to the Governor. Such report shall be written or printed, as the Governor directs. 2. A copy shall be forwarded by the Governor to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them, or to any one or more of them. 3. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Governor shall direct the same to be paid out of the assets of the company, which he is hereby authorized to do.

Imp. § 109; F. M. S. § 86.

Power of company to appoint inspectors. 89. 1. Any company under this Ordinance may by a special resolution appoint inspectors for the purpose of examining into the affairs of the company. 2. The inspectors so appointed shall have the same powers, and perform the same duties as inspectors appointed by the Governor, with this exception that instead of making their report to the Governor, they shall make the same in such manner and to such persons as the company in general meeting directs. 3. The officers and agents of the company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to

such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Governor.

Imp. § 110; F. M. S. § 87.

Report of inspectors to be evidence. 90. A copy of the report of any inspectors appointed under this Ordinance, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Imp. § 111; F. M. S. § 88.

Notices.

Service of notices on company. 91. Any summons, notice, order, or other document required to be served upon the company may be served by leaving the same, or sending it through the post by a registered letter addressed to the company at their registered office; and any notice to the Registrar of Joint Stock Companies may be served by sending it to him through the post by a registered letter, or by delivering it to him, or by leaving it for him at his office.

Imp. § 116; F. M. S. § 89.

Rules as to notices by letter. 92. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period, if any, prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a registered letter into the post office.

Imp. 52 & 53 Vic. c. 63, § 26; F. M. S. § 90.

Authentication of notices by company. 93. Any summons, notice, order, or proceeding requiring authentication by the company, may be signed by the director, secretary, or other authorized officer of the company; and the same may be in writing or in print, or partly in writing and partly in print.

Imp. § 117; F. M. S. § 91.

Legal proceedings.

Evidence of proceedings at meetings. 94. 1. Every company under this Ordinance shall cause minutes of all resolutions and proceedings of general meetings of the company and of the directors or managers of the company, in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings. 2. Until the contrary is proved, every general meeting of the company, or meeting of directors or managers in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened, and all resolutions passed thereat, or proceedings had, to have been duly passed and had, and all appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications: Provided always that nothing in this section shall be deemed to give validity to acts done by a director, manager, or liquidator after his appointment has been shown to be invalid.

Imp. § 71; F. M. S. § 92.

Provision as to costs in actions brought by certain limited companies. 95. Where a limited company is plaintiff in any action, or other legal proceeding, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, any judge having jurisdiction in the matter may require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Imp. § 278; F. M. S. § 93.

Plaints in actions against members. 96. In any action brought by a company under this Ordinance against any member to recover any call or other moneys due from such member in his character of member, it shall be sufficient to allege that the defendant was at the time of the making of such call, or the accruing due of such moneys, a member of the company, and is indebted to the company in respect of a call made or other moneys due whereby an action has accrued to the company.

F. M. S. § 94.

Alteration of forms.

Forms to be used; Governor in Council may alter forms. 97. 1. The forms set forth in the second Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer. 2. The Governor in Council may from time to time make such alterations in the tables and forms contained in the first Schedule hereto, so that he does not increase the amount of fees payable to the Registrar in the said Schedule mentioned, and in the forms in the second Schedule, or make such additions to the last-mentioned forms as he deems requisite. 3. Any such table or form when altered shall be published in the *Government Gazette*, and upon such publication being made, such table or form shall have the same force as if it were included in the Schedule to this Ordinance; but no alteration made by the Governor in Council in the Table marked A contained in the first Schedule shall affect any company registered prior to the date of such alteration or repeal, as respects such company, any portion of such table.

Imp. § 118; F. M. S. § 95.

Arbitrations.

Power for companies to refer matters to arbitration. 98. 1. Any company under this Ordinance may from time to time, by writing under its common seal, agree to refer and may refer to arbitration any matter whatsoever in dispute between itself and any other company or person; and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies. 2. The provisions of this Part relating to arbitrations shall be deemed to apply to arbitrations as well between companies and persons as between companies, and in the construction of such provisions "the companies" shall include a person party to any such arbitration.

Imp. § 119; F. M. S. § 96.

Power to alter or revoke agreements for reference. 99. The companies jointly but not otherwise, from time to time, by writing under their respective common seals, may add to, alter, or revoke any agreement for reference in accordance with this Ordinance theretofore entered into between the companies or any of the terms, conditions, or stipulations thereof.

F. M. S. § 97.

Agreements to be carried into effect. 100. Every reference or agreement in accordance with this Ordinance, except so far as it is from time to time revoked or modified in accordance with this Ordinance, shall bind the companies, and may and shall be carried into full effect.

F. M. S. § 98.

Reference to arbitrator. 101. Where the companies agree, the reference shall be made to a single arbitrator.

F. M. S. § 99.

Reference to two or more arbitrators. 102. Except where the companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, to wit: where there are two companies, the reference shall be made to two arbitrators; where there are three or more companies, the reference shall be made to so many arbitrators as there are companies.

F. M. S. § 100.

Appointment of arbitrators by companies. 103. Where there are to be two or more arbitrators, every company shall by writing, under their common seal, appoint one of the arbitrators, and shall give notice in writing thereof to the other company or companies.

F. M. S. § 101.

Appointment of arbitrators by Governor. 104. Where there are to be two or more arbitrators, if any of the companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other company, or by the other companies, or any of them, then on the application of the companies, or any of them, the Governor instead of the company so failing to appoint an arbitrator may appoint an arbitrator. The arbitrator so appointed shall, for the purposes of this Ordinance, be deemed to be appointed by the company so failing.

F. M. S. § 102.

Appointment of arbitrators by companies to supply vacancies. 105. Where the reference is made to two or more arbitrators, if, before the matters referred to them are determined, any arbitrator dies or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

F. M. S. § 103.

Appointment of arbitrators by Governor to supply vacancies. 106. 1. Where the company by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit, or failing to act, fails to make the appointment within fourteen days after being thereunto requested in writing by the other company, or by the other companies, or any of them, then on the application of the companies, or any of them, the Governor may appoint an arbitrator. 2. The arbitrator so appointed shall for the purposes of this Ordinance be deemed to be appointed by the company so failing.

F. M. S. § 104.

Appointment of arbitrator not revocable. 107. When any appointment of an arbitrator is made, the company making the appointment shall have no power to revoke the same without the previous consent in writing of the other company, or every other company in writing, under their common seal.

F. M. S. § 105.

Appointment of umpire by arbitrators. 108. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

F. M. S. § 106.

Appointment of umpire by Governor. 109. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then on the application of the companies, or any of them, the Governor may appoint an umpire; and the umpire so appointed shall, for the purposes of this Ordinance, be deemed to be appointed by the arbitrators.

F. M. S. § 107.

Appointment of umpire by arbitrators to supply vacancy. 110. Where two or more arbitrators are appointed, if, before the matters referred to them are determined, their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

F. M. S. § 108.

Appointment of umpire by Governor to supply vacancy. 111. 1. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness, or failure to act of their umpire, then on the application of the companies, or any of them, the Governor may appoint an umpire. 2. The umpire so appointed shall, for the purposes of this Ordinance, be deemed to be appointed by the arbitrators so failing.

F. M. S. § 109.

Succeeding arbitrators and umpires to have powers of predecessors. 112. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire shall respectively have the like powers and authorities as his respective predecessor.

F. M. S. § 110.

Reference to umpire. 113. Where there are two or more arbitrators, if they do not within such a time as the companies agree on, or failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

F. M. S. § 111.

Power for arbitrators, etc., to call for books, etc., and examine witnesses on oath. 114. The arbitrator and the arbitrators and the umpire respectively may call for the production of any documents or evidence in the possession or power of the companies respectively, or which they respectively can produce, and which the arbitrator or the arbitrators or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the companies respectively on oath, and may administer such oath accordingly.

F. M. S. § 112.

Procedure in the arbitration. 115. Except where and as the companies otherwise agree, the arbitrator, and the arbitrators and the umpire respectively, may proceed in the business of the reference in such manner as he and they respectively shall think fit.

F. M. S. § 113.

Arbitration may proceed in the absence of companies. 116. The arbitrator, and the arbitrators, and the umpire, respectively, may proceed in the absence of all or any of the companies in every case in which, after giving notice in that behalf to the companies respectively, the arbitrator, or the arbitrators, or the umpire shall think fit so to proceed.

F. M. S. § 114.

Several awards may be made. 117. 1. The arbitrator, and the arbitrators, and the umpire respectively, may, if he and they respectively think fit, make several awards each on part of the matters referred, instead of one award on all the matters referred. 2. Every such award on part of the matters shall, for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them, be not then or thereafter awarded on.

F. M. S. § 115.

Awards made in due time to bind all parties. 118. The award of the arbitrator, or of the arbitrators or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the companies within such a time as the companies agree on, or failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator or the arbitrators or the umpire, shall be binding and conclusive on all the companies.

F. M. S. § 116.

Power for umpire to extend period for making his award. 119. Provided always that (except where and as the companies otherwise agree) the umpire from time to time by writing under his hand, may extend the period within which his award is to be made. If it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

F. M. S. § 117.

Awards not to be set aside for informality. 120. No award made on any arbitration in accordance with this Ordinance shall be set aside for any irregularity or informality.

F. M. S. § 118.

Awards to be obeyed. 121. Except only so far as the companies bound by any award in accordance with this Ordinance from time to time otherwise agree, all things by every award in accordance with this Ordinance lawfully required to be done, omitted, or suffered, shall be done, omitted, or suffered accordingly.

F. M. S. § 119.

Agreements, arbitrations, and awards to have effect. 122. Full effect shall be given by the Court and by the companies respectively, and otherwise to all agreements, references, arbitrations, and awards in accordance with this Ordinance, and the performance or observance thereof may, where the Court thinks fit, be compelled by any process against the companies respectively, or their respective property, that the Court or any judge thereof shall direct, and where requisite frame for the purpose.

F. M. S. § 120.

Costs of arbitration and award. 123. Except where and as the companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators, and the umpire respectively.

F. M. S. § 121.

Payment; costs. 124. Except where and as the companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the companies in equal shares, and in other respects the companies shall bear their own respective costs.

F. M. S. § 122.

Submission to arbitration to be filed in Court. 125. On the application of any party interested, the submission to any such arbitration may be filed in the Court

and an order of reference may be made thereon with any directions the Court thinks fit; and the provisions of *The Civil Procedure Ordinance, 1878*, or any subsisting modification thereof, shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

Part IV. Winding-up of Companies and Associations under this Ordinance.

Preliminary.

Meaning of "contributory." 126. The term "contributory" shall mean every person liable to contribute to the assets of a company under this Ordinance in the event of the same being wound up. It shall also in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Imp. § 124; F. M. S. § 124.

Nature of liability of contributory. 127. The liability of any person to contribute to the assets of a company under this Ordinance in the event of the same being wound up, shall be deemed to create a debt of the nature of a specialty, accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the insolvency of any contributory to prove against his estate the estimated value of his liability to future calls as well as calls already made.

Imp. § 125; F. M. S. § 125.

Contributories in case of death. 128. If any contributory dies, either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives shall be liable in due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory; and such personal representatives shall be deemed to be contributories accordingly.

Imp. § 126; F. M. S. § 126.

Contributories in case of insolvency. 129. If any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his trustees or assignees shall be deemed to represent such bankrupt for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to prove against the estate of such bankrupt, or otherwise, to allow to be paid out of his assets in due course of law any moneys due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up.

Imp. § 127; F. M. S. § 127.

Contributories in case of marriage. 130. In the case of a company formed under this Ordinance, no person shall incur any liability to contribute to the assets of the company merely by reason of his marriage with a female contributory, whether such marriage take place before or after she has been placed on the list of contributories.

Imp. § 128; F. M. S. § 128. See the provisions of the *Married Women's Property Ordinance*, (Ord. No. 11 of 1902), and the *Mohammedan Marriage Ordinance, 1880*, (Ord. No. 5 of 1880), *supra*.

Winding-up by Court.

Circumstances under which company may be wound up by Court. 131. A company under this Ordinance may be wound up by the Court under the following circumstances, that is to say: a) Whenever the company has passed a special resolution requiring the company to be wound up by the Court; b) Whenever the company does not commence its business within twelve months from its incorporation, or suspends its business for the space of a whole period of twelve months; c) Whenever the members are reduced in number to less than seven; d) Whenever the company is unable to pay its debts; e) Whenever the Court is of opinion that it is just and equitable that the company should be wound up.

Imp. § 129; F. M. S. § 129.

When company deemed unable to pay its debts; definition of "debts." 132. A company under this Ordinance shall be deemed to be unable to pay its debts: a) Whenever a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding two hundred and fifty dollars then due, has served on the company, by leaving the same at its registered office, a demand under his hand

requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same, to the reasonable satisfaction of the creditor; b) Whenever execution or other process issued on a judgment decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the company is returned unsatisfied, in whole or in part; c) Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts. The expression "debts", as used in this part of this Ordinance, means debts actually due, of which the creditor could claim immediate payment, except in the case of a company issuing or liable under policies of assurance upon human life within the Colony, or granting annuities upon human life within the Colony. In the case of such a company (hereinafter called a life assurance company), the expression "debts," as so used, includes also contingent or prospective liability under policies and annuity, and other existing contracts.

Imp. § 130; F. M. S. § 130.

Application for winding-up to be made by petition. 133. 1. Any application to the Court for the winding-up of a company under this Ordinance shall be by petition, which may be presented by the company or by any one or more creditor or creditors, contributory or contributories of the company, or by all or any of the above parties together or separately. 2. Every order which may be made on any such petition shall operate in favour of all the creditors, and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory. 3. In the case of a life assurance company, the petition may be presented by one or more policy holders, but the Court shall not give a hearing to the petition until security for costs for such amount as the judge thinks reasonable is given, and until a prima facie case is also established to the satisfaction of the judge; and where the company has an uncalled capital of an amount sufficient, with the future premiums receivable by the company, to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time in the discretion of the Court, to enable the uncalled capital, or a sufficient part thereof, to be called up; and if at the end of the original or any suspended time for which the proceedings have been suspended, such an amount has not been realized by means of calls as, with the already invested assets, is equal to the liabilities, an order shall be made on the petition as if the company had been proved to be unable to pay its debts. 4. Nothing in this section authorizes the presentation of a petition by a member of a company who is indebted to the company in respect of a call made or other moneys due.

Imp. § 137; F. M. S. § 131.

Contributory when not qualified to present winding-up petition. 134. 1. No contributory of a company under this Ordinance shall be capable of presenting a petition for winding up such company, unless the members of the company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him and registered in his name for a period of at least six months during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder. 2. Provided that where a share has, during the whole or any part of the six months, been held by or registered in the name of the wife of a contributory, either before or after her marriage, or by or in the name of any trustee for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the contributory.

Imp. § 137; F. M. S. § 132.

Commencement of winding-up by Court. 135. A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Imp. § 139; F. M. S. § 133.

Court may grant injunction. 136. 1. The Court may at any time after the presentation of a petition for winding-up a company under this Ordinance, and before making an order for winding up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any suit or proceeding against the company upon such terms as the Court thinks fit. 2. The Court may also at any time after the presentation of such petition, and before

the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the company.

Imp. § 140; F. M. S. § 134.

Course to be pursued by Court on hearing petition. 137. Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.

Imp. § 141; F. M. S. § 135.

Suits to be stayed after order for winding-up. 138. When an order has been made for winding up a company under this Ordinance, no suit or other proceeding shall be proceeded with or commenced against the company, except with the leave of the Court, and subject to such terms as the Court may impose.

Imp. § 142; F. M. S. § 136.

Copy of order to be forwarded to Registrar. 139. When an order has been made for winding-up a company under this Ordinance, a copy of such order shall forthwith be forwarded by the company to the Registrar of Joint Stock Companies, who shall make a minute thereof in his books relating to the company.

Imp. § 143; F. M. S. § 137.

Power of Court to stay proceedings. 140. The Court may at time after an order has been made for winding up a company, upon the application of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Imp. § 144; F. M. S. § 138.

Effect of order on share capital of company limited by guarantee. 141. When an order has been made for winding up a company limited by guarantee, and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt of the nature of a specialty due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

F. M. S. § 139.

Court may have regard to wishes of creditors or contributories. 142. 1. The Court may, as to all matters relating to the winding-up, have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence, and may if it thinks fit, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. 2. In the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company.

Imp. § 145; F. M. S. § 140.

Official liquidators.

Appointment of official liquidators. 143. 1. For the purpose of conducting the proceedings in winding up a company, and assisting the Court therein, there may be appointed a person or persons to be called an official liquidator, or official liquidators. 2. The Court may appoint such person or persons either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators. 3. In all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator, is to be done by all or any one or more of such persons. 4. The Court may also determine whether any and what security is to be given by any official liquidator on his appointment. 5. If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court. 6. A receiver shall not be appointed of assets in the hands of an official liquidator. 7. Where an order is made for winding up a company by the Court, the Official Assignee in Bankruptcy shall, unless and until the Court otherwise orders, be sole official liquidator.

Imp. § 149; F. M. S. § 141.

Resignations, removals, filling up vacancies, and compensation. 144. Any official liquidator may resign, or be removed by the Court on due cause shown. Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court. There shall be paid to the official liquidator such salary or remuneration by way of percentage or otherwise as the Court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

Imp. § 149; F. M. S. § 142.

Style and duties of official liquidators. 145. The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name. He shall take into his custody or under his control all the property, effects, and actionable claims to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the Court.

Imp. § 149; F. M. S. § 143.

Power of official liquidators. 146. The official liquidator shall have power, with the sanction of the Court, to do the following things: a) To bring or defend any action or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company; b) To carry on the business of the company, so far as may be necessary for the beneficial winding-up of the same; c) To sell the real and personal property, effects, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels; d) To do all acts and to execute in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal; e) To prove, rank, claim, and draw a dividend in the matter of the bankruptcy of any contributory for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance in the matter of the bankruptcy as a separate debt due from such bankrupt, and rateably with the other separate creditors; f) To draw, accept, make, and endorse any bill of exchange or promissory note, in the name and on behalf of the company; also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making, or endorsing of every bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf such company in the course of carrying on the business thereof; g) To take out, if necessary, in his official name, letters of administration to the estate of any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act can not be conveniently done in the name of the company; and in all cases where he takes out letters of administration or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself; h) To do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Imp. § 151; F. M. S. § 144.

Discretion of official liquidator. 147. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Imp. § 151; F. M. S. § 145.

Appointment of solicitor to assist official liquidator. 148. 1. The official liquidator may, with the sanction of the Court, appoint a solicitor to assist him in the performance of his duties: Provided that where the official liquidator is a solicitor, he shall not appoint his partner unless the latter consents to act without remuneration. 2. The official liquidator incurs no personal responsibility to the solicitor for the costs of the winding-up.

Imp. § 151; F. M. S. § 146.

Ordinary powers of Court.

Collection and application of assets. 149. As soon as may be after making an order for winding up the company, the Court shall settle a list of contributories,

with power to rectify the register of members in all cases where such rectification is required in pursuance of this Ordinance, and shall cause the assets of the company to be collected and applied in discharge of its liabilities existing at the date of the said order.

Imp. § 163; F. M. S. § 147. In the winding-up of any company under *The Companies Ordinance, 1889*, whose assets may prove to be insufficient for the payment of its debts and liabilities, and the costs of winding-up, the same rules prevail as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy. — Ord. No. 8 of 1909, § 5 (1).

Provision as to representative contributories. 150. In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others.

Imp. § 163; F. M. S. § 148.

Power of Court to require delivery. 151. The Court may at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent, or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

Imp. § 164; F. M. S. § 149.

Power of Court to order payment of debts by contributory. 152. 1. The Court may at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made in manner in the said order mentioned, of any moneys due from him, or from the estate of the person whom he represents, to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Part of this Ordinance. 2. The Court may, in making such order, when the company is not limited, allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profits. 3. Provided that when all the creditors of any company, whether limited or unlimited, are paid in full any moneys due on account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls. 4. In the event of the winding-up of any limited company, the Court, if it thinks fit, may make to any director or manager of such company, whose liability is unlimited, the same allowance by way of set-off as under this section it may make to a contributory where the company is not limited.

Imp. § 165; F. M. S. § 150.

Power of Court to make call. 153. 1. The Court may at any time after making an order for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories to the extent of their liability for payment of all or any sums it deems necessary to satisfy the estimated debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of contributories amongst themselves. 2. The Court may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Imp. § 166; F. M. S. § 151.

Power of Court to order payment into bank. 154. The Court may order any contributory, purchaser, or other person from whom money is due to the company, to pay the same into any local bank or branch bank, to the account of the official liquidator, instead of to the official liquidator; and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Imp. § 167; F. M. S. § 152.

Regulation of account with Court. 155. All moneys, bills, notes, and other securities, paid and delivered into any bank or branch bank in the event of a company being wound up by the Court, shall be subject to such order and regulation for the

keeping of the account of such moneys and other effects, and for the payment and delivery in or investment and payment and delivery out of the same as the Court may direct.

Imp. § 167; F. M. S. § 153.

Provision in case of representative contributory not paying moneys ordered.

156. If any person made a contributory as personal representative of a deceased contributory, makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the estate of such deceased contributory, and of compelling payment thereof of the moneys due.

Imp. § 126; F. M. S. § 154.

Order conclusive evidence. 157. Any order made by the Court in pursuance of this Ordinance upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due; and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever.

Imp. § 168; F. M. S. § 145.

Court may exclude creditors not proving within certain time. 158. The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Imp. § 169; F. M. S. § 156.

Court to adjust rights of contributories. 159. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Imp. § 170; F. M. S. § 157.

Court to order costs. 160. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding up any company, in such order of priority as the Court thinks just.

Imp. § 171; F. M. S. § 158.

Dissolution of company. 161. When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

Imp. § 172; F. M. S. § 159.

Registrar to make minute of dissolution of company. 162. Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company.

Imp. § 172; F. M. S. § 160.

Penalty for not reporting dissolution of company. 163. If the official liquidator makes default in reporting to the Registrar in the case of a company being wound up by the Court, the order that the company be dissolved, he shall be liable to a penalty not exceeding fifty dollars for every day during which he is so in default.

Imp. § 172; F. M. S. § 161.

Extraordinary powers of Court.

Power of Court to summon persons before it suspected of having property of company. 164. 1. The Court may, after it has made an order for winding up the company, summon before it any officer of the company, or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company. 2. If any persons so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination. 3. The Court may require any such officer or person to produce any documents in his custody or power relating to the company. Nevertheless, in cases where any person claims any lien on documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Imp. § 174; F. M. S. § 162.

Examination of parties by Court. 165. The Court may examine upon oath, either by word of mouth or by written interrogatories, any person appearing or brought before it in manner aforesaid, concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person and require him to subscribe the same.

Imp. § 174; F. M. S. § 163.

Power to arrest contributory about to abscond or to remove or conceal any of his property. 166. The Court may at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the Colony, or otherwise abscond, or to remove or conceal any of his goods or chattels for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Imp. § 176; F. M. S. § 164.

Powers of Court cumulative. 167. Any powers by this Ordinance conferred on the Court shall be deemed to be in addition to and not in restriction of any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory, or debtor, or his estate; and such proceedings may be instituted accordingly.

Imp. § 177; F. M. S. § 165.

Enforcement of and appeal from orders.

Power to enforce orders. 168. All orders made by a Court under this Ordinance may be enforced in the same manner in which orders of such Court made in any suit pending therein may be enforced.

Imp. § 178; F. M. S. § 166.

Appeals from orders. 169. Re-hearings of and appeals from any order or decision made or given in the matter of the winding-up of a company by the Court, may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction, that no such re-hearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made in manner in which notices of appeal are ordinarily given, unless such time is extended by the Court.

Imp. § 181.

Affidavits, etc., may be sworn in the United Kingdom or abroad, before any competent Court or person. 170. If any affidavit, affirmation, or declaration required to be sworn or made under the provisions or for the purposes of this Part of this Ordinance be lawfully sworn or made in the United Kingdom, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any Court, Judge, or person lawfully authorized to take or receive affidavits, affirmations, or declarations, or before any of Her Majesty's consuls, or vice-consuls in any foreign parts out of Her Majesty's dominions, all courts, judges, justices, commissioners, and persons acting judicially in the Colony, shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul, attached or appended or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this Part of this Ordinance.

F. M. S. § 168.

Voluntary winding-up of a company.

Circumstances under which company may be wound up voluntarily. 171. 1. A company under this Ordinance may be wound up voluntarily: a) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; b) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily; c) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the company can not by reason of its liabilities continue its business,

and that it is advisable to wind up the same. 2. For the purposes of this Ordinance any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

Imp. § 182; F. M. S. § 169.

Commencement of voluntary winding-up. 172. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up.

Imp. § 183; F. M. S. § 170.

Effect of voluntary winding-up on status of company. 173. Whenever a company is wound up voluntarily, the company shall from the date of the commencement of such winding-up cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof; and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding-up, shall be void; but its corporate state and all its corporate powers shall, notwithstanding that its regulations otherwise provide, continue until the affairs of the company are wound up.

Imp. § 184; F. M. S. § 171.

Notice of resolution to wind up voluntarily. 174. Notice of any special resolution or extraordinary resolution passed for winding up a company voluntarily, shall be given by advertisement in the *Government Gazette*.

Imp. § 185; F. M. S. § 172.

Consequence of voluntary winding-up. 175. The following consequences shall ensue upon the voluntary winding-up of a company: a) The assets of the company shall be applied in satisfaction of its liabilities *pari passu* as they exist at the commencement of the winding-up, and subject thereto shall, unless the regulations of the company otherwise provide, be distributed amongst the members according to their rights and interests in the company; b) Liquidators shall be appointed for the purpose of winding up the affairs of the company, and distributing the assets; c) The company in general meeting shall appoint such persons as it thinks fit to be liquidators, and may fix the remuneration to be paid to them; d) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him; e) Upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the company in general meeting, or the liquidators may sanction the continuance of such powers; f) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination, by any number not less than two; g) The liquidators may, without the sanction of the Court, exercise all powers by this Ordinance given to the official liquidators; h) The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories; i) The liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same; j) The liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves.

Imp. § 186; F. M. S. § 173.

Effect of winding-up on share capital of company limited by guarantee. 176. Where a company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

F. M. S. § 174.

Power of company to delegate authority to appoint liquidators. 177. 1. A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may by an extraordinary resolution delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators, or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised. 2. Any act done by the creditors in pursuance of such delegated power shall have the same effect as it if had been done by the company.

Imp. § 190; F. M. S. § 175.

Arrangement when binding on creditors. 178. Any arrangement entered into by a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors shall be binding on the company, if sanctioned by an extraordinary resolution, and on the creditors, if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Imp. § 191; F. M. S. § 176.

Power of creditor or contributory to appeal. 179. Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Imp. § 192; F. M. S. § 177.

Power for liquidators or contributories or creditors in voluntary winding-up to apply to Court. 180. 1. Where a company is being wound up voluntarily the liquidators or any contributory or creditor of the company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise as respects the enforcing of calls or in respect of any other matter all or any of the powers which the Court might exercise if the company were being wound up by the Court. 2. The Court, if satisfied that the determination of such question, or the required exercise of power will be just and beneficial, may accede wholly or partially to such application on such terms and subject to such conditions as the Court thinks fit, or it may make such other order on such application as the Court thinks just.

Imp. § 193; F. M. S. § 178.

Power of liquidators to call general meetings. 181. 1. Where a company is being wound up voluntarily the liquidators may from time to time during the continuance of such winding-up summon general meetings of the company, for the purpose of obtaining the sanction of the company by special resolution, or extraordinary resolution, or for any other purposes they think fit. 2. In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year. 3. They shall also transmit such account to the Registrar.

Imp. § 194; F. M. S. § 179.

Power to fill up vacancy in office of liquidators. 182. If any vacancy occurs in the office of liquidators appointed by the company by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy; and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the Court.

Imp. § 189; F. M. S. § 180.

Official Assignee to be liquidator in case of vacancy. 183. 1. If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the Official Assignee in Bankruptcy shall be the sole liquidator. 2. The Court may on due cause shown remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding-up.

F. M. S. § 181.

Liquidators on conclusion of winding-up to make up an account. 184. 1. As soon as the affairs of the company are fully wound up, the liquidator shall make up an account, showing the manner in which such winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators. 2. The meeting shall be called by advertisement, specifying the time, place, and object of such meeting, and such advertisement shall be published one month at least previously to the meeting in the *Government Gazette*.

Imp. § 195; F. M. S. § 182.

Liquidators to report meeting to Registrar. 185. 1. The liquidators shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held; and on the expiration of three months from the date of registration of such return, the company shall be deemed to be dissolved. 2. If the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding twenty-five dollars for every day during which such default continues.

Imp. § 195; F. M. S. § 183.

Costs of voluntary liquidation. 186. All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

Imp. § 196; F. M. S. § 184.

Saving of rights of creditors. 187. The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Imp. § 197; F. M. S. § 185.

Power of Court to adopt proceedings of voluntary winding-up. 188. Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order, or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Imp. § 198; F. M. S. § 186.

Winding-up subject to the supervision of the Court.

Power of Court on application to direct winding up subject to supervision. 189. When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.

Imp. § 199; F. M. S. § 187.

Petition for winding-up subject to supervision. 190. A petition praying wholly or in part that a voluntary winding-up shall continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding-up the company by the Court.

Imp. § 200; F. M. S. § 188.

Court may have regard to wishes of creditors. 191. 1. The Court may in determining whether a company is to be wound up altogether by the Court, or subject to the supervision of the Court in the appointment of a liquidator, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. 2. In the case of creditors regard shall be had to the value of the debts due to each creditor, and in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company.

Imp. § 201; F. M. S. § 189.

Power to Court to appoint additional liquidator in winding-up subject to supervision. 192. 1. Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may in such order, or in any subsequent order, appoint any additional liquidator. 2. Any liquidator so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company. 3. The Court may from time to time remove any liquidator so appointed by the Court, and fill up any vacancy occasioned by such removal or by death or resignation.

Imp. § 202; F. M. S. § 190.

Effect of order of Court for winding-up subject to supervision. 193. 1. Where an order is made for a winding-up subject to supervision of the Court, the liquidator appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all his powers without the sanction or intervention of the Court in the same manner as if the company were being wound up altogether voluntarily. 2. Save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court, shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court. 3. In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding-up subject to the supervision of the Court.

Imp. § 203; F. M. S. § 191.

Liquidator where supervision order superseded by compulsory order. 194. Where an order has been made for the winding-up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Official Assignee in Bankruptcy shall become and be the sole liquidator, unless the Court otherwise orders.

Imp. § 204; F. M. S. § 192.

Supplemental provisions.

Dispositions after commencement of winding-up avoided. 195. Where any company is being wound up by the Court, or subject to the supervision of the Court, all dispositions of the property, effects, and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company made between the commencement of the winding-up and the order for winding-up shall, unless the Court otherwise orders, be void.

Imp. § 205; F. M. S. § 193.

Books of company to be evidence. 196. Where any company is being wound up, all books, accounts, and documents of the company and of the liquidators, shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

Imp. § 220; F. M. S. § 194.

Disposal of books, accounts, and documents of company. 197. Where any company has wound up under this Ordinance, and is about to be dissolved, the books, accounts, and documents of the company and of the liquidator may be disposed of in the following way, that is to say: Where the company has been wound up by or subject to the supervision of the Court in such way as the Court directs; and where the company has been wound up voluntarily in such way as the company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution no responsibility shall rest on the company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed by reason that the same or any of them can not be made forthcoming to any party or parties claiming to be interested therein.

Imp. § 222; F. M. S. § 195.

Inspection of books. 198. Where an order has been made for winding up a company by the Court, or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the

possession of the company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

Imp. § 221; F. M. S. § 196.

Debts of all descriptions to be proved. 199. In the event of any company being wound up under this Ordinance, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made so far as is possible of the value of all such debts or claims as may be subject to any contingency, or sound only in damages, or for some other reason do not bear a certain value.

Imp. § 206; F. M. S. § 197.

Wages and salary to be preferential claims. 200. 1. In the distribution of the assets of any company being wound up under this Ordinance, there shall be paid in priority to other debts: a) All wages or salary of any clerk or servant in respect of services rendered to the company during four months next before the commencement of the winding-up, not exceeding two hundred and fifty dollars; and b) All wages of any labourer or workman in respect of services rendered to the company during two months next before the commencement of the winding-up. 2. The foregoing debts shall rank equally among themselves, and shall be paid in full unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions between themselves. 3. Subject to the retention of such sums as may be necessary for the cost of administration, or otherwise, the liquidator shall discharge the foregoing debts forthwith so far as assets of the company are and will be sufficient to meet them as and when such assets come into his hands.

Imp. § 209; F. M. S. § 198.

General scheme of liquidation may be sanctioned. 201. The liquidator may, with the sanction of the Court, where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company, where the company is being wound up altogether voluntarily, pay any classes of creditors in full or make such compromise or other arrangement as the liquidator may deem expedient with creditors or persons claiming to be creditors or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable.

Imp. § 214; F. M. S. § 199.

Power to compromise. 202. The liquidator may, with the sanction of the Court, where the company is being wound up by the Court, or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company, where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory, or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company, or the winding-up of the company, upon the receipt of such sums payable at such times and generally upon such terms as may be agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

Imp. § 214; F. M. S. § 200.

Where compromise proposed, Court may order a meeting of creditors, etc., to decide as to such compromise. 203. Where any compromise or arrangement shall be proposed between a company which is, at the commencement of this Ordinance or afterwards in the course of being wound up, either voluntarily, or by or under the supervision of the Court, and the creditors of such company, or any class of such creditors, the Court shall have (in addition to any other of its powers), power, on the application in a summary way of any creditor, or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and if a majority in number, representing three-fourths in value of such creditors or class of creditors present, either in person or by proxy at such meeting, shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such

creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

Imp. § 214; F. M. S. § 201.

Power for liquidators to accept shares, etc., as a consideration of sale of property of company. 204. 1. Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, debentures, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, debentures, policies, or other like interests, or in addition thereto participate in the profits of or receive any other benefit from the purchasing company. 2. Any sale made, or arrangement entered into by the liquidator in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing, addressed to the liquidators, or one of them, and left at the registered office of the company, not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may, by writing addressed and left as last aforesaid, require the liquidator to do one of the following things, as the liquidator may prefer, that is to say: either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned; such purchase money to be paid before the company is dissolved, and to be raised by the liquidator in such manner as may be determined by special resolution. 3. No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if an order be made within a year for winding up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Imp. § 192; F. M. S. § 202.

Mode of determining price. 205. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration under the provisions next hereinafter contained.

Imp. § 192; F. M. S. § 203.

Appointment of arbitrator when questions are to be determined by arbitration. 206. 1. When any dispute so directed to be settled by arbitration has arisen, then, unless both parties concur in the appointment of a single arbitrator, each party on request of the other party shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred. 2. After any such appointment has been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation. 3. If for the space of fourteen days after any such dispute has arisen and after a request in writing has been served by the one party on the other party to appoint an arbitrator, such last mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters in dispute; and in such case the award and determination of such single arbitrator shall be final.

F. M. S. § 204.

Vacancy of arbitrator to be supplied. 207. If, before the matters so referred are determined, any arbitrator appointed by either party die, or become incapable, or refuse, or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the

other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed ex parte; and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

F. M. S. § 205.

Appointment of umpire. 208. 1. Where more arbitrators than one have been appointed, they shall, before entering upon the matters referred to them, nominate and appoint by writing under their hands, an umpire to decide on any such matters on which they shall differ. 2. If such umpire die or refuse, or for seven days neglect to act, they shall forthwith, after such death, refusal, or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

F. M. S. § 206.

Power of arbitrators to call for books, etc. 209. The said arbitrators, or their umpire, may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

F. M. S. § 207.

Costs to be in discretion of arbitrators. 210. The costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpire, as the case may be.

F. M. S. § 208.

Submission to arbitration may be filed in Court. 211. On the application of either of the parties, the submission to any such arbitration may be filed in the Court, and an order of reference may be made thereon; and the provisions of *The Civil Procedure Ordinance, 1878* shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

See now the Civil Procedure Code, 1907, Ord. No. 31 of 1907.

Certain attachments, distresses, and executions to be void. 212. 1. Where any company is being wound up by the Court, or subject to the supervision of the Court, any attachment, distress, or execution put in force without the leave of the Court against the estate or effects of the company after the commencement of the winding-up shall be void. 2. Nothing in this section applies to proceedings by or on behalf of the Crown.

Imp. § 211; F. M. S. § 209. The provisions of the Ordinance are framed to carry out the object of making an equitable provision for the distribution for the effects of the company among the persons entitled. The property of a company in the course of being wound up is trust property, affected with an obligation to be dealt with in a particular way. Such trust is created as from the date of the commencement of the winding-up. Assets of the company situated in a foreign jurisdiction may be affected by this trust quality, at least in cases where a creditor seeking to prove in a local winding-up, refuses to turn over assets received in the foreign jurisdiction under an order of the foreign court. — In *Rawang Tin Mining Co.*, (1890), 4 Kyshe, 570; 3 S. L. J. 27.

Fraudulent preference. 213. 1. Every conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against any individual trader be deemed, in the event of his bankruptcy, to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Ordinance, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly. 2. For the purposes of this section, the making of an application for winding up a company shall, in the case of a company being wound up by the Court, or subject to the supervision of the Court, and a resolution for winding up the company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of bankruptcy in the case of an individual trader; and any conveyance or assignment made by any company formed under this Ordinance of all its estate and effects to trustees for the benefit of its creditors shall be void.

Imp. § 210; F. M. S. § 210.

Power of Court to assess damages against delinquent directors and officers. 214. Where in the course of the winding-up of any company under this Ordinance, it appears that any past or present director, manager, official, or other liquidator, or

any banker, solicitor, or officer of such company has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any moneys so misapplied, or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

Imp. § 215; F. M. S. § 214.

Penalty on falsification of books. 215. If any director, officer, or contributory of any company wound up under this Ordinance, destroys, mutilates, alters, falsifies, or fraudulently secretes any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall be liable to imprisonment of either description for a term not exceeding two years, and also to a fine not exceeding two hundred and fifty dollars.

Imp. § 216; F. M. S. § 212.

Prosecution of delinquent directors in case of winding-up by Court. 216. Where any order is made for winding up a company by the Court, or subject to the supervision of the Court, if it appear in the course of such winding-up any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidator or the liquidators, as the case may be, to institute a prosecution for such offence, and may order the costs and expenses of such prosecution to be paid out of the assets of the company.

Imp. § 217; F. M. S. § 213.

Penalty for false evidence. 217. If any person upon any examination upon oath authorized under this Ordinance, or in any affidavit, deposition, or solemn affirmation, in or about the winding-up of any company under this Ordinance, or otherwise in and about any matter arising under this Ordinance, intentionally gives false evidence, he shall be liable to imprisonment of either description for a term not exceeding seven years, and shall also be liable to fine.

Imp. § 218; F. M. S. § 214.

Part V. Registration Office.

Constitution of registration office. 218. The registration of companies under this Ordinance shall be conducted as follows, that is to say: a) The Governor may from time to time appoint such Registrars, Assistant Registrars, clerks and servants as he may think necessary for the registration of companies under this Ordinance, and remove them at pleasure; b) The Governor may make such regulations as he thinks fit with respect to the duties to be performed by any such Registrars, Assistant Registrars, clerks and servants as aforesaid; c) The Governor in Council may from time to time determine the places at which offices for the registration of companies are to be established, so that there be at all times maintained in each of the towns of Singapore and George Town one such office, and that no company shall be registered except at an office within that Settlement in which, by the memorandum of association, the registered office of the company is declared to be established, provided that every company having its registered office in the Settlement of Malacca shall be registered at the office in the Town of Singapore; d) The Governor may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies; e) Every person may inspect the documents kept by the Registrar of Joint Stock Companies. There shall be paid for such inspection such fees as may be directed by the Governor in Council, not exceeding fifty cents for each inspection. Any person may require a certificate of the incorporation of any company or a copy or extract of any other document or any part of any other document to be certified by the Registrar. There shall be paid for such certificate of incorporation, certified copy,

or extract, two dollars for the certificate of incorporation, and ten cents for each folio of one hundred words of such copy or extract, or such lower fees as the Governor in Council may from time to time direct; f) The existing Registrars for the registration of joint stock companies shall, during the pleasure of the Governor, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the Governor; g) There shall be paid to any Registrar, Assistant Registrar, clerk or servant that may hereafter be employed in the registration of joint stock companies, such salaries as the Governor directs; h) Whenever any act is herein directed to be done to or by the Registrar of Joint Stock Companies, such act shall, until the Governor otherwise directs, be done to or by the existing Registrar of Joint Stock Companies, or in his absence, to or by such person as the Governor may for the time being authorize. But in the event of the constitution of the existing registry office being altered, such act shall be done to or by such officer or officers, and at such place or places with reference to the local situation of the registered offices of the company to be registered as the Governor may appoint.

Imp. § 243; F. M. S. § 215.

Part VI. Application of Ordinance to Companies registered under the Indian Act 19 of 1857.

Application of Ordinance to companies formed under Indian Act 19 of 1857.

219. Subject as hereinafter mentioned, this Ordinance, with the exception of table A in the first Schedule, shall apply to companies formed and registered under Indian Act No. 19 of 1857 in the same manner in the case of a limited company as if such company had been formed and registered under this Ordinance as a company limited by shares, and in the case of company other than a limited company, as if such company had been formed and registered as an unlimited company under this Ordinance; with this qualification that wherever reference is made expressly or impliedly to the date of registration such date shall be deemed to refer to the date at which such companies were respectively registered under the said Act, and the power of altering regulations by special resolution given by this Ordinance shall, in the case of any company formed and registered under the said Act, extend to altering any provisions contained in the table marked B annexed to Act No. 19 of 1857, and shall also, in the case of an unlimited company formed and registered as last aforesaid, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that such regulations are contained in the memorandum of association.

Application of Ordinance to companies registered under Indian Act 19 of 1857.

220. This Ordinance shall apply to companies registered but not formed under the said Act in the same manner as it is hereinafter declared to apply to companies registered but not formed under this Ordinance; with this qualification that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Act.

Mode of transferring shares. 221. Any company registered under the said Act may cause its shares to be transferred in manner hitherto in use or in such other manner as the company may direct.

Part VII. Companies authorized to register under this Ordinance.

Companies capable of being registered. 222. With the exceptions made in the next following section, and subject to the regulations therein contained, every company existing at the time of the commencement of this Ordinance, including any company registered under the said Act in the last preceding Part of this Ordinance mentioned, consisting of seven or more members, and any company hereafter formed in pursuance of any Act of Parliament or Ordinance other than this Ordinance or of letters patent; or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Ordinance as an unlimited company, or a company limited by shares, or a company limited by guarantee, and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

Imp. § 249.

Regulations as to registration of existing companies. 223. The following regulations shall be observed with respect to the registration of companies under this Part of this Ordinance, that is to say: a) No company having the liability of its members limited by Act of Parliament or Ordinance, other than this Ordinance, or by letters patent, and not being a joint stock company as hereinafter defined, shall register under this Ordinance in pursuance of this Part thereof; b) No company having the liability of its members limited by Act of Parliament or Ordinance other than this Ordinance, or by letters patent shall register under this Ordinance in pursuance of this Part thereof as an unlimited company, or as a company limited by guarantee; c) No life assurance company existing at the time of the commencement of this Ordinance, and no company that is not a joint stock company as hereinafter defined, shall, in pursuance of this Part of this Ordinance, register under this Ordinance as a company limited by shares; d) No company shall register under this Ordinance in pursuance of this Part thereof, unless an assent to its so registering is given by a majority of such of its members as may be present personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose; e) Where a company not having the liability of its members limited by Act of Parliament or Ordinance, or by letters patent, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present personally or by proxy at such last-mentioned general meeting; f) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount. In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled, according to the regulations of the company of which he is a member.

Imp. § 249.

Definition of "joint stock" company. 224. For the purposes of this Part of this Ordinance so far as the same relates to the description of companies empowered to register as companies limited by shares, a joint stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount, divided into shares also of fixed amount, or held and transferable as stock or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital or the holders of such stock, and no other persons; and such company when registered with limited liability under this Ordinance, shall be deemed to be a company limited by shares.

Imp. § 250.

Requisitions for registration by companies. 225. Previously to the registration in pursuance of this Part of this Ordinance of any joint stock company, there shall be delivered to the Registrar the following documents, that is to say: a) A list showing the names and addresses and occupations of all person who on a day named in such list, and not being more than six clear days before the day of registration were members of such company, with the addition of the shares held by such persons respectively, distinguishing in cases where such shares are numbered, each shares by its number; b) A copy of any Act of Parliament, Ordinance, Royal Charter, letters patent, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the company; c) If any such joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement, specifying the following particulars, that is to say: 1. The nominal capital of the company, and the number of shares into which it is divided; 2. The number of shares taken and the amount paid on each share; 3. The name of the company, with the addition of the word "Limited" as the last word thereof; 4. With the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee.

Imp. § 252.

Requisitions for registration by existing company not being a joint stock company.

226. Previously to the registration in pursuance of this Part of this Ordinance, of any company not being a joint stock company, there shall be delivered to the Registrar a list showing the names, addresses, and occupations of the directors or other managers, if any, of the company, also a copy of any Act of Parliament, Ordinance, letters patent, deed of settlement, contract of co-partnership, or other instrument constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee.

Imp. § 253.

Power for existing company to register amount of stock instead of shares. 227.

Where a joint stock company authorized to register under this Ordinance has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the company, and the names of the persons who are holders of such stock on some day to be named in the statement, not more than six clear days before the day of registration.

Authentication of statement of existing companies. 228. The list of members and directors, and any other particulars relating to the company hereby required to be delivered to the Registrar shall be verified by the statutory declaration of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company.

Imp. § 254.

Registrar may require evidence as to nature of company. 229. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or is not a joint stock company, as herein-before defined.

Imp. § 255.

Exemption of certain companies from payment of fees. 230. No fees shall be charged in respect of the registration in pursuance of this Part of this Ordinance of any company in cases where such is not registered as a limited company, or where previously to its being registered as a limited company the liability of the shareholders was limited by some Act of Parliament, or Ordinance, or by letters patent.

Imp. § 257.

Company to change name. 231. Any company authorized by this Part of this Ordinance to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "Limited".

Imp. § 258.

Certificate of registration of existing companies. 232. Upon compliance with the requisitions in this Part of this Ordinance contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked B and C in the first Schedule hereto, the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Ordinance, and in the case of a limited company, that it is limited; and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal.

Imp. § 259.

Certificate to be evidence of compliance with Ordinance. 233. A certificate of incorporation given at any time to any company registered in pursuance of this Part of this Ordinance, shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Ordinance, have been complied with, and that the company is authorized to be registered under this Ordinance as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Ordinance.

Imp. § 17.

Transfer. 234. All such property, real and personal, including all interests and rights in, to, and out of property, real and personal, and including obligations and things in action as may belong to or be vested in the company at the date of its registration under this Ordinance, shall, on registration, pass to and vest in the company as incorporated under this Ordinance, for all the estate and interest of the company therein.

Imp. § 260.

Registration under this Ordinance not to affect obligations incurred previously to registration. 235. The registration in pursuance of this Part of this Ordinance of any company shall not affect or prejudice the liability of such company to have enforced against it or its right to enforce any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of such company previously to such registration.

Imp. § 261.

Continuation of existing actions. 236. All such actions and other legal proceedings as may at the time of the registration of any company, registered in pursuance of this Part of this Ordinance, have been commenced by or against such company, or the public officer, or any member thereof, may be continued in the same manner as if such registration had not taken place. Nevertheless, execution shall not issue against the effects of any individual member of such company upon any judgment or order obtained in any action or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment or order, an order may be obtained for winding up the company.

Imp. § 262.

Effect of registration under Ordinance. 237. When a company is registered under this Ordinance, in pursuance of this Part thereof, all provisions contained in any Act of Parliament, Ordinance, deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company, including in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Ordinance shall apply to such company, and the members, contributories, and creditors thereof in the same manner in all respects as if it had been formed under this Ordinance subject to the provisions following, that is to say: a) That table A in the first Schedule to this Ordinance shall not, unless adopted by special resolution, apply to any company registered under this Ordinance, in pursuance of this Part thereof; b) That the provisions of this Ordinance relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered; c) That no company shall have power to alter any provisions contained in any Act of Parliament or Ordinance relating to the company; d) That no company shall have power, without the sanction of the Governor in Council, to alter any provision contained in any letters patent relating to the company; e) That in the event of the company being wound up, every person shall be a contributory in respect of the debts and liabilities of the company contracted prior to registration who is liable to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid. Every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid. In the event of the death or bankruptcy of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained, with respect to the representatives of deceased contributories, and with reference to the assignees of bankrupt contributories, and to the husbands of married contributories shall apply; f) That nothing herein contained shall authorize any company to alter any such provisions contained in any deed or settlement, contract of co-partnery, letters patent, or other instrument, constituting or regulating the company as would, if such company had originally been formed under this Ordinance, have been contained in the memorandum of association, and are not authorized to be altered by this Ordinance. But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Ordinance, in pursuance of this Part, by virtue of any Act of Parliament, Ordinance, deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company.

Imp. § 263.

Power of Court to restrain further proceedings. 238. The Court may at any time after the presentation of a petition for winding up a company registered in pursuance of this Part of this Ordinance, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action or legal proceedings against any contributory of the company, as well as against the company as hereinbefore provided, upon such terms as the Court thinks fit.

Imp. § 265.

Order for winding-up company. 239. Where an order has been made for winding up a company registered in pursuance of this Part in addition to the provisions hereinbefore contained, it is hereby further provided that no action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose.

Imp. § 266.

Part VIII. Application of Ordinance to unregistered Companies.

Winding-up unregistered companies. 240. Subject as hereinafter mentioned, any partnership, association, or company (except railway companies incorporated by Act of Parliament or Ordinance), consisting of more than seven members, and not registered under this Ordinance, and hereinafter included under the term "unregistered company" may be wound up under this Ordinance, and all the provisions of this Ordinance with respect to winding-up shall apply to such company, with the following exceptions and additions: a) An unregistered company shall, for the purpose of determining the division of the Court having jurisdiction in the matter of the winding-up, be deemed to be registered in that Settlement where its principal place of business is situate, or if it has a principal place of business situate in more than one Settlement, then in each Settlement where it has a principal place of business. Moreover, the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one Settlement) such one of its principal places of business as is situate in that Settlement in which proceedings are being instituted, shall, for all the purposes of the winding-up of such company, be deemed to be the registered office of the company; b) No unregistered company shall be wound up under this Ordinance voluntarily, or subject to the supervision of the Court; c) The circumstances under which an unregistered company may be wound up are as follows, that is to say: 1. Whenever the company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs; 2. Whenever the company is unable to pay its debts; 3. Whenever the Court is of opinion that it is just and equitable that the company should be wound up; d) An unregistered company shall, for the purposes of this Ordinance, be deemed to be unable to pay its debts: a) Whenever a creditor to whom the company is indebted at law or in equity by assignment or otherwise, in a sum exceeding two hundred and fifty dollars then due, has served on the company, by leaving the same at the principal place of business of the company, or by delivering to the secretary, or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand, requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor; b) Whenever any action or other proceeding has been instituted against any member of the company for any debt or demand due or claimed to be due from the company, or from him in his character of member of the company, and notice in writing of the institution of such action or other legal proceeding having been served upon the company, by leaving the same at the principal place of business of the company, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not, within ten days after service of such notice, paid, secured, or compounded for such debt or demand, or procured such action or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against all costs, damages, and expenses to be incurred by him by reason of the same; c) Whenever execution or other process issued on a judgment or order in favour of any creditor in any proceeding instituted by such creditor against the

company, or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied; d) Whenever it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

Imp. § 268; F. M. S. § 216.

Who to be deemed a contributory in the event of company being wound up. 241. 1. In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company. 2. Every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid. 3. In the event of the death or bankruptcy of any contributory, or marriage of any female contributory, the provisions hereinbefore contained with respect to the personal representatives of a deceased contributory, and to the assignees of a bankrupt contributory, and to the husbands of married contributories, shall apply.

Imp. § 269; F. M. S. § 217.

Power of Court to restrain further proceedings. 242. The Court may at any time after the making of an application for winding up an unregistered company, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action or proceeding against any contributory of the company or against the company as hereinbefore provided, upon such terms as the Court thinks fit.

Imp. § 270; F. M. S. § 218.

Effect of order for winding up company. 243. Where an order has been made for winding up an unregistered company, in addition to the provisions hereinbefore contained in the case of companies formed under this Ordinance, it is hereby further provided that no action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose.

Imp. § 271; F. M. S. § 219.

Provision in case of unregistered company. 244. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the order made for winding up such company, or by any subsequent order, direct that all such property, real and personal, including all interests, claims, and rights in, to, and out of property, real and personal, and including things in action, as may belong to or be vested in the company, or to or in any person or persons on trust for or on behalf of the company, or any part of such property, is to vest in the official liquidator, or official liquidators, by his or their official name or names; and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may in his or their official name or names, or in such name or names and after giving such indemnity as the Court directs, bring or defend any suits or other legal proceedings relating to any property vested in him or them, or any actions or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the company, and recovering the property thereof.

Imp. § 272; F. M. S. § 220.

Provision of this Part of Ordinance cumulative. 245. 1. The provisions made by this Part of this Ordinance with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding up companies by the Court. 2. The Court or official liquidator may, in addition to anything contained in this Part of this Ordinance, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed under this Ordinance; but an unregistered company shall not, except in the event of its being wound up be deemed to be a company under this Ordinance, and then only to the extent provided by this Part of this Ordinance.

Imp. § 273; F. M. S. § 221.

Part IX. Miscellaneous Provisions.

Company not to buy its own shares. 246. No company under this Ordinance shall have power to buy its own shares.

F. M. S. § 222.

Cognizance of offences. 247. All offences under this Ordinance may be tried by a magistrate or Court of two magistrates, unless the period of imprisonment to which the offender is liable exceeds that which such magistrate or Court is competent to award under the law for the time being in force. When the period of imprisonment provided by this Ordinance exceeds the period that may be awarded by a Court of two magistrates, the offender shall be committed for trial at the assizes.

Imp. § 276; F. M. S. § 223.

Power to make orders as to costs. 248. Subject to the provisions hereinbefore contained, the Court may in any proceedings under this Ordinance, make such order as to costs as it thinks fit.

Imp. § 278; F. M. S. § 224.

Chief Justice, with the concurrence of Governor, may make rules. 249. The Chief Justice, with the concurrence of the Governor, may, from time to time, make rules consistent with this Ordinance concerning the mode of proceeding to be had for winding up a company, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital, and the subdivision of the shares of a company.

Imp. § 237; F. M. S. § 225.

Construction of "Registrar of Joint Stock Companies" in Indian Act 21 of 1860. 250. In sections one and eighteen of Indian Act 21 of 1860 (for the registration of literary, scientific and charitable societies), the words "Registrar of Joint Stock Companies" shall be construed to mean Registrar of Joint Stock Companies under this Ordinance, or any Ordinance for the time being in force.

Certified copies of document to be evidence. 251. Any certificate of the incorporation of any company given by the Registrar, or by any Assistant Registrar for the time being, shall be received in evidence as though it were the original certificate, and any copy of or extract from any of the documents, or part of the documents kept and registered at any office for the registration of companies under this Ordinance, if duly certified to be a true copy under the hand of the Registrar, or one of the Assistant Registrars for the time being, and whom it shall not be necessary to prove to be the Registrar or Assistant Registrar, shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document.

F. M. S. § 226.

Accused may give evidence. 252. Every person charged with an offence under this Ordinance may, if he thinks fit, tender himself to be examined on his own behalf, and thereupon may give evidence in the same manner and with the like effect and consequences as any other witness.

Registrars to enforce Ordinance. 253. 1. It shall be the duty of the Registrar of Joint Stock Companies to enforce the provisions of this Ordinance, and to prosecute in cases where the same are contravened. 2. Every such Registrar shall, in the month of January in each year, make and forward to the Colonial Secretary, to be laid on the table of the Legislative Council, a report on the working of the Registry during the preceding year, with particulars of all cases where the provisions of this Ordinance have been contravened, and of the proceedings taken by him thereon.

F. M. S. § 227.

Fees. 254. All fees taken by the Registrar under this Ordinance shall be paid into the Treasury, and form part of the public revenue of the Colony.

F. M. S. § 228.

*First Schedule.**Table A. Regulations for management of a company limited by shares.*

(This Table is substantially identical with Imp. 25 & 26 Vic. c. 89, Sched. I, Table A, except as follows: In §§ 1 and 3 "twenty-five cents" is substituted for "one shilling"; in § 6 "8⁰⁰" is substituted for "5⁰⁰"; in § 9, "executors and administrators" is omitted; § 16 reads as follows: "The instrument of transfer shall be presented to the company together with such evidence as the directors may require to prove the title of the transferee, and thereupon the company

shall register the transferee as a member;" in § 29 "four months" is substituted for "six months"; § 57 reads as follows: "The office of director shall be vacated: if he or any partner of his, or the firm of which he is a member, holds any other office or place of profit under the company; if he becomes bankrupt or insolvent; if he is punished under any of the penal provisions of the foregoing Ordinances; if he is concerned in or participates in the profits of any contract with the company. But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; nevertheless he shall not vote in respect of such contract or work, and if he does so vote his vote shall not be counted;" in § 91 "Governor in Council" is substituted for "Board of Trade".

Table B. Table of fees to be paid to the Registrar of Joint Stock Companies by Company having a capital divided into shares.

(This Table relates to fees.)

Table C. Table of fees to be paid to the Registrar of Joint Stock Companies by a Company not having a capital divided into shares.

(This Table relates to fees.)

Form D.

(This Form is substantially identical with Form contained in 25 & 26 Vic. c. 89, Sched. I, Form D.)

Second Schedule.

(Forms A—E are substantially identical with 25 & 26 Vic. c. 89, Sched. II, Forms A—E.)

b) No. 16 of 1906. An Ordinance to provide for the Registration of Deeds executed by Corporations and Companies under their Common Seal and to validate the Registration of Deeds so executed and purporting to have been registered under The Registration of Deeds Ordinances, 1886 to 1901 (13th July, 1906).

Short title. 1. This Ordinance may be cited as *The Companies' Deeds Registration Ordinance, 1906.*

Instruments executed by corporations or companies under their common seal to be subject to The Registration of Deeds Ordinances, 1886 to 1901. 2. From and after the passing of this Ordinance all assurances and other instruments executed by a corporation or a company under its common seal which if they had been executed by a person and not by a corporation or a company might have been registered under *The Registration of Deeds Ordinances, 1886 to 1901*, may be registered in accordance with the provisions of the said Ordinances and the several provisions of *The Registration of Deeds Ordinances, 1886 to 1901*, shall be held to apply to all instruments executed by a corporation or a company under its common seal so far as such provisions are applicable to the said instruments and so far as such provisions are not repugnant to the provisions of this Ordinance.

Presentation of instruments for registration on behalf of a corporation or company.

3. No instrument shall be registered by or on behalf of a corporation or company, unless it be presented for registration by: a) A director or secretary of such corporation or company; b) The agent of such corporation or company duly authorized by a power of attorney; or c) The solicitor of such corporation or company.

Inquiry before registration. 4. 1. The provisions of section 13 of *The Registration of Deeds Ordinance, 1886*, shall not apply to any instrument executed by a corporation or company under its common seal but no such instrument shall be registered unless: a) A director or the secretary of the corporation or company by which the instrument purports to have been executed appear before the Registrar of Deeds and admit that the instrument was executed in accordance with the articles of association or other rules governing the conduct of the said corporation or company, and that the seal upon it is the seal of the said corporation or company; or b) The execution of the instrument is certified in the form set forth in the Schedule hereto or as near thereto as circumstances permit: a) By a solicitor of the Supreme Court or notary

public practising in the Straits Settlements; b) A British consul or vice-consul; c) A notary public practising in the country where such execution takes place; d) A Judge of any Court or magistrate officiating in the country where such execution takes place. Provided that in cases b) and c) the certificate purports to be sealed with the seal of office of the official signing the certificate, and in case d) with the seal of office of the official or the seal of the Court of the official signing the certificate. 2. The Registrar of Deeds may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by the Ordinance, examine on oath any one present in his office.

Registration of Deeds heretofore executed by a corporation or company to be valid. 5. Where before the commencement of this Ordinance any deed executed by a corporation or company under its common seal has been registered under *The Registration of Deeds Ordinances, 1886 to 1901*, such registration shall be valid for the purposes for which it was effected and shall be of the same force and effect as if it had been made under the provisions of this Ordinance.

The Schedule.

I _____ (a notary public, judge, magistrate, British consul or vice-consul practising at _____ or residing at _____ or a solicitor of the Supreme Court of the Straits Settlements practising in the Straits Settlements) hereby certify that on the _____ day of 19 _____ A. D. the common seal of the _____ (insert name of corporation or company) was duly affixed to the above-written instrument in my presence in accordance with the regulations of the said { corporation
company.
Witness my hand and seal. _____ [L. S.]

c) No. 4 of 1909. An Ordinance to amend The Companies Ordinance, 1889 (23d April, 1909).

Short title and construction. 1. This Ordinance may be cited as *The Companies Ordinance, 1909*, and shall be read with *The Companies Ordinance, 1889*.

Court empowered to grant relief for non-compliance with section 31 of the Companies Ordinance, 1889. 2. 1. Whenever before or after the commencement of this Ordinance any shares in the capital of any company under *The Companies Ordinance, 1889*, credited as fully or partly paid up, shall have been or may be issued for a consideration other than cash, and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar of Joint Stock Companies in compliance with section 31 of *The Companies Ordinance, 1889*, the company or any person interested in such shares, or any of them, may apply to the Court for relief, and the Court if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for filing with the Registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall, in relation to such shares, operate as if it had been duly filed with the Registrar aforesaid before the issue of such shares. 2. Any such application may be made in the manner in which an application to rectify the register of members may be made under section 61 of *The Companies Ordinance, 1889*, and either before or after an order has been made or an effective resolution has been passed for the winding-up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid, and any such application shall if not made by the company be served on the company. 3. Any such order may be made on such terms and conditions as the Court may think fit, and the Court may make such order as to costs as it deems proper, and may direct that an office copy of the order shall be filed with the Registrar aforesaid, and the order shall in all respects have full effect. 4. Where the Court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience, or is impracticable, it may in lieu thereof direct the filing of a memorandum in writing in a form approved by the Court, specifying the consideration for which the shares were issued, and may direct that such memorandum being filed within a specified period, it shall, in relation to such shares, operate as if it were

a sufficient contract in writing within the meaning of section 31 of *The Companies Ordinance, 1889*, and had been duly filed with the Registrar aforesaid before the issue of such shares. The memorandum shall before the filing thereof be stamped with the same amount of ad valorem stamp duty as would be chargeable upon the requisite contract, unless the contract has been produced to the Registrar duly stamped, or unless the Registrar is otherwise satisfied that the contract was duly stamped.

Jurisdiction cumulative. 3. The jurisdiction by the Ordinance given to the Court is not by implication to curtail or derogate from its jurisdiction to grant relief in any such case under section 61 of *The Companies Ordinance, 1889*, or otherwise.

d) No. 14 of 1909. An Ordinance to amend the Law relating to the Subdivision of Shares of registered Companies (5th November, 1909).

Short title. 1. This Ordinance may be cited as *The Companies (Subdivision of Shares) Ordinance, 1909*, and shall be read with *The Companies Ordinance, 1889*, hereinafter called "the principal Ordinance." Any copy of the principal Ordinance printed after the passing of this Ordinance may be printed with the amendment made by section 2 of this Ordinance.

[2. Amends Ord. No. 5 of 1889, § 24, and is there incorporated.]

Amendment to have retrospective effect. 3. Where any company registered under the provisions of the principal Ordinance has prior to the passing of this Ordinance subdivided its shares so as to make them of smaller amount than fifty dollars each, such subdivision shall not be deemed to be invalid by reason of the amendment effected by the last preceding section of this Ordinance not having been made at the date of such subdivision, but shall, if otherwise lawfully made, be deemed to have been lawfully made in the same way as if the said amendment had been effected prior to the date of such subdivision.

Sea Carriage of Live Stock.

No. 13 of 1901. An Ordinance to enable the Governor in Council to regulate the Transit of Cattle and other Live Stock by Sea (23d July, 1901).

Short title. 1. This Ordinance may be cited as *The Transit of Cattle and other Live Stock by Sea Ordinance, 1901*.

Rules. 2. Subject to the provisions of this Ordinance the Governor in Council may make rules for all or any of the following purposes, and may from time to time alter, revoke, and suspend such rules: a) For securing for cattle and other live stock carried by sea a proper supply of food and water; b) For protecting them from unnecessary suffering when being shipped, during the passage, and on landing; c) For their destruction when injured at sea; d) For the provision of a sufficient number of attendants on cattle and other live stock at sea, and for the control of such attendants; e) Any other matters as to which it may be expedient to make rules for carrying into effect the objects of this Ordinance.

Rules to be laid before Legislative Council. 3. 1. Every rule made under the last preceding section shall be laid on the table of the Legislative Council at its next meeting, and shall then be published in the *Gazette* and shall have the same force as if enacted in this Ordinance, but such rule shall not come into operation until a date to be fixed for that purpose by the Governor, which date shall be at least 14 days subsequent to such publication as aforesaid, and any rule which is disapproved by a resolution of the Legislative Council shall not come into operation, or if it has come into operation shall cease to have operation. 2. Unless and until the Governor in Council shall make rules under the last preceding section and except in so far as altered or rescinded by such rules the rules contained in the Schedule shall be in force.

Inspectors. 4. The Governor may from time to time by notification in the *Gazette* appoint either by name or office such inspectors as he may consider necessary for carrying out the purposes of this Ordinance.

Inspection. 5. An inspector under this Ordinance may at any time board any vessel or enter any pen on board such vessel for the purposes of inspection.

Impeding an inspector. 6. If any person without lawful authority or excuse, proof whereof shall lie on him, refuses to such inspector admission to any vessel or pen or otherwise impedes such inspector in the execution of his duty such person shall be guilty of an offence, and on conviction by a magistrate shall be liable to a fine which may amount to \$ 250, and in default of payment to imprisonment for any period not exceeding three months.

Penalty for breach of rules. 7. If any person without lawful authority or excuse, proof whereof shall lie on him, does or omits to do anything in contravention of any rule made under this Ordinance such person shall be guilty of an offence and on conviction by a magistrate shall be liable to fine which may amount to \$ 250, and in default of payment to imprisonment for any period not exceeding three months.

Power to exempt certain steamers. 8. It shall be lawful for the Governor in Council from time to time by order to be published in the *Gazette* to exempt any particular steamer or line of steamers from the operation of any such portion of the rules in the Schedule or any other rules made under this Ordinance as may relate to the fittings and arrangements for the accommodation, safety, and comfort of cattle and other live stock.

Schedule.

Rules to regulate the transit of cattle by sea.

1. These rules may be cited as *The Transit of Cattle by Sea Rules, 1901*, and shall subject to the provisions of the Ordinance apply to all vessels in or on which cattle are carried to be landed or embarked at any port in the Colony.

2. If any animal has a limb broken, or is otherwise seriously injured during the voyage, the master of the vessel shall forthwith cause that animal to be slaughtered.

3. A vessel on which cattle are carried shall in addition to the ordinary crew carry a sufficient number of qualified attendants to properly tend the cattle, such attendants shall be at the rate of one attendant for every 25 or fraction of 25 head of cattle. Proper accommodation shall be provided for these attendants on board, and they shall be required before coming on board to sign the ship's articles.

4. The cattle shall be carried in pens and shall be put on board and landed with proper appliances and without causing unnecessary suffering to the animals. Where the cattle can not be walked from a wharf to the vessel, or from the vessel to a wharf or the shore, they shall be embarked or disembarked by means of proper slings. No cattle shall be slung by the horns.

5. No pen shall exceed ten feet in length and nine feet in breadth, and the stanchions of each pen shall be securely fastened to the deck and the materials used in the construction of the pen shall be of a substantial character, and of sufficient strength to withstand the action of the weather, and to resist the weight of the animals thrown against them.

6. Ship's fittings likely to cause injury or unnecessary suffering to cattle shall be properly and securely fenced off.

7. The floor of each pen shall, in order to prevent slipping, be fitted with suitable battens or other proper footholds which shall be securely fastened to the deck and shall be strewn with a proper quantity of sand or other suitable substance.

8. Cattle while on board a vessel shall be protected against injury or unnecessary suffering from undue exposure to the weather.

9. No pen shall be overcrowded so as to cause injury or unnecessary suffering to the cattle therein.

10. Cattle shall be provided while on board with a sufficient amount of food and water.

11. All cattle while being carried on a vessel shall be securely tied by the head.

Public and Bank Holidays.

a) No. 9 of 1879. An Ordinance to provide for Public and Bank Holidays (21st August, 1879).

Certain days to be public holidays. 1. The several days mentioned in Schedule A to this Ordinance annexed (hereinafter referred to as public holidays) shall in addition to Sundays be dies non, and shall be kept (except as hereinafter provided) as holidays in this Colony.

Regulations. 2. The Governor-in-Council may, from time to time, make regulations excluding in whole or in part from the operation of this Ordinance any public office or any department thereof, and thereupon all acts and things relating to such public office or department thereof may be done and performed on any public holiday notwithstanding the provisions of this Ordinance.

Bills due on bank or public holidays to be payable on the following day. 3. After the passing of this Ordinance, the several days mentioned in the Schedule B to this Ordinance annexed (and which days are in this Ordinance hereinafter referred to as bank holidays) shall be kept as close holidays in all banks in this Colony, and all bills of exchange and promissory notes which are due and payable on any such bank or public holiday shall be payable, and in case of non-payment may be noted and protested, on the next following day, and not on such bank or public holiday; and any such noting or protest shall be as valid as if made on the day on which the bill or note was made due and payable.

Provision as to notice of dishonour and presentation for honour. 4. When the day on which any notice of dishonour of an unpaid bill of exchange or promissory note should be given, or when the day on which a bill of exchange or promissory note should be presented or received for acceptance, or accepted or forwarded to any referee or referees, is a bank or public holiday, such notice of dishonour shall be given and such bill of exchange or promissory note shall be presented or forwarded on the day next following such bank or public holiday.

As to any payments on bank or public holidays. 5. No person shall be compellable to make any payment or to do any act upon such bank or public holidays which he would not be compellable to do or make on Sunday; and the obligation to make such payment and do such act shall apply to the day following such bank or public holiday; and the making of such payment and doing such act on such following day shall be equivalent to payment of the money or performance of the act on the holiday.

Governor may appoint special days to be observed as public holidays. 6. It shall be lawful for the Governor, by notification in the *Government Gazette*, and otherwise, at any time to appoint a special day to be observed as a public holiday, or as a bank holiday, in addition to or in substitution for any of the days mentioned in the Schedules to this Ordinance annexed, and thereupon the provisions of this Ordinance shall be applicable to such day in the same manner as if the said day had been mentioned in Schedule A or Schedule B to this Ordinance annexed.

Interpretation clause. 7. For the purposes of this Ordinance, the day next following a public holiday shall mean the next following day not being itself a public holiday, and the day next following a bank holiday shall be construed to mean the next following day not being itself a public or bank holiday.

Short title. 8. This Ordinance may be cited as *The Holidays Ordinance, 1879.*

Schedule A.

[As amended by Ord. No. 26 of 1902, § 2.]

The 1st of January.

Anniversary of the Settlement of Singapore (to be observed at the Settlements of Singapore and Malacca only) (6th February).

Anniversary of the Settlement of Penang (to be observed at the Settlement of Penang only) (12th August).

Good Friday and the following day.

The Late Queen Victoria's Birthday to be known as "Victoria Day" (24th May).

The Birthday of the Reigning Sovereign for the time being.

The Coronation Day of the Reigning Sovereign for the time being.

The Birthday of the Heir Apparent for the time being.

Christmas Day and the following day.

If any of these holidays fall on a Sunday, the following Monday shall be a public holiday, unless otherwise ordered.

Schedule B.

[As amended by Ord. No. 26 of 1902, § 2.]

Chinese New Year..... Two days.

Hindu Festival (Taipūsum) to be observed in the Settlement of Penang only One day.

Easter Monday.

Whit Monday.

The first Monday in August.

b) No. 26 of 1902. An Ordinance to amend the Holidays Ordinance, 1879 (5th September, 1902).

Short title. 1. This Ordinance may be cited as *The Holidays Ordinance, 1879 Amendment Ordinance 1902*, and shall be read and construed as one with *The Holidays Ordinance, 1879* (hereinafter called the principal Ordinance.) Any copy of the principal Ordinance printed after the commencement of this Ordinance may be printed with the amendments required and made by this Ordinance.

[2. Amends Ord. No. 9 of 1879, Scheds. A and B, and is there incorporated.]

Marine Insurance.

Ord. No. 36 of 1907. An Ordinance to consolidate and amend the Law relating to Stamps (20th December, 1907).

Directions as to sea policy. 26. 1. No contract for sea insurance (other than such insurance as is referred to in section 506 of the *Merchant Shipping Act, 1894*) shall be valid unless the same is expressed in a sea policy. 2. No policy of sea insurance made for time shall be made for any time exceeding twelve months. 3. No policy of sea insurance shall be valid unless it specifies the particular risk or adventure, or the time for which it is made, the names of the subscribers or underwriters, and the amount or amounts insured. 4. Where any sea insurance is made for or upon a voyage and also for time, the policy shall be charged with duty as a policy for or upon a voyage and also with duty as a policy for time. 5. Notwithstanding anything in this section contained, a policy of sea insurance made for time may contain a continuation clause and such a policy shall not be invalid on the ground only that by reason of the continuation clause it may become available for a period exceeding twelve months. 6. There shall be charged on a policy of sea insurance containing a continuation clause the stamp duty mentioned in the first schedule in addition to the stamp duty which is otherwise chargeable on the policy. 7. If the risk covered by the continuation clause attaches and a new policy is not issued covering the risk, the continuation clause shall be deemed to be a new and separate contract of sea insurance expressed in the policy in which it is contained, but not covered by the stamp thereon, and the policy shall be stamped in respect of that contract accordingly but may be so stamped without penalty at any time not exceeding thirty days after the risk has so attached.

Legal alteration in policies may be made. 27. Nothing in this Ordinance shall prohibit the making of any alteration which may lawfully be made in the terms and conditions of any policy of sea insurance after the policy has been underwritten; provided that the alteration be made before notice of the determination of the risk originally insured, and that it do not prolong the time covered by the insurance thereby made beyond the period of six months in the case of a policy made for a less period than six months, or beyond the period of twelve months in the case of a policy made for a greater period than six months, and that the articles insured remain the property of the same person or persons and that no additional or further sum be insured by reason or means of the alteration.

By virtue of Ordinance No. 4 of 1878, § 6, the Imperial *Marine Insurance Act, 1906* (6 Edw. 7, c. 41) is in force, within the meaning of the Stamp Ordinance, 1907 (Ord. No. 36 of 1907): "policy of sea insurance": a) means any insurance (including re-insurance) made upon any ship or vessel (whether for marine or inland navigation) or upon the machinery, tackle, or furniture of any ship or vessel or upon any goods, merchandise, or property of any description whatever on board of any ship or vessel, or upon the freight of or any other interest which may be lawfully insured in or relating to any ship or vessel; and b) includes any insurance of goods, merchandise, or property for any transit which includes, not only a sea risk under clause a), but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance. Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise, or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea insurance. "Continuation clause" in a policy of sea insurance made for time means an agreement to the

following or like effect, namely, that in the event of the ship being at sea or the voyage otherwise not completed on the expiration of the policy, the subject matter of the insurance shall be held covered until the arrival of the ship, or for a reasonable time thereafter not exceeding thirty days. Such policies are subject to a stamp duty: 1. When the amount insured does not exceed \$ 1000, 10 cents; 2. When the amount insured exceeds \$ 1000, 25 cents; 3. For time policies on hulls of vessels for every \$ 1000 or part thereof insured, 25 cents. Re-insurance by an insurance company which has granted a policy of sea insurance or a policy of fire insurance with another company by way of indemnity or guarantee, against the payment on the original insurance of a certain part of the sum insured thereby, irrespective of sum insured or term, 5 cents. The stamp, if an adhesive one, must, when the policy is issued out of the Colony, be cancelled by the first holder in the Colony. Letter of cover or engagement to issue a policy of insurance are exempted from the above; provided that unless such letter or engagement bears the stamp prescribed by this Ordinance for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned. — Ibid. Schedules. The cases relating to marine insurance are contained in the note to Ord. No. 4 of 1878, § 6, *supra*.

Bankruptcy.

a) No. 2 of 1888. An Ordinance to amend the Law of Bankruptcy (3d December, 1888).¹⁾

Preliminary.

Short title. 1. This Ordinance may be cited as *The Bankruptcy Ordinance, 1888*, and shall, except as by this Ordinance otherwise provided, commence and come into operation on such day as shall be fixed for that purpose by order of the Governor in Council.

Imp. §§ 1, 3. The text is reproduced from Garrard's Acts, and incorporates the amendments made by Ords. No. 8 of 1896, No. 22 of 1900, No. 34 of 1907, and No. 26 of 1908.

Interpretation.

Interpretation of terms. 2. 1. [As amended by Ords. No. 34 of 1907, § 2, and No. 9 of 1910, § 2.] In this Ordinance, unless the context otherwise requires: "The Court" means the Court having jurisdiction in bankruptcy under this Ordinance. "Affidavit" includes attestation on honour. "Available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made. "Consultative committee" means the committee appointed under section twenty-one. "Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Ordinance made provable in bankruptcy. "Gazetted" means published in the *Government Gazette*. "General rules" include forms. "Goods" include all chattels personal. "Oath" includes attestation on honour. "Ordinary resolution" means a resolution decided by a majority in value of the creditors present personally or by proxy at a meeting of creditors, and voting on the resolution. "Property" includes money, goods, things in action, land, and every description of property, whether real or personal, wheter situate in the Colony or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined. "Registrar" includes Assistant Registrar and Deputy Registrar. "Resolution" means ordinary resolution. "Secured creditor" means a person holding a mortgage, charge, or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor. "Sheriff" includes the bailiff of a District Court and any officer charged with the execution of a writ or other process. "Special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors, and voting on the resolution. "Bankruptcy petition" includes a petition for a receiving order and "deed of arrangement" includes any of the following instruments, whether under seal or not, made by for, or in respect of the affairs of a debtor for the benefit of his creditors generally, that is to say: a) An assignment of property; b) A deed or agreement for a composition; and, in cases

¹⁾ The references in the notes (Imp.) are to the Imperial *Bankruptcy Act, 1883*, (46 & 47 Vic. c. 52), unless otherwise indicated.

where creditors of a debtor obtain any control over the property or business; c) A deed of inspectorship entered into for the purpose of winding up or carrying on a business; d) A letter of license, authorizing the debtor or any other person to manage, carry on, realize, or dispose of a business, with a view to the payment of debts; and e) Any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorizing the debtor or any other person to manage, carry on, realize, or dispose of the debtor's business, with a view to the payment of his debts. 2. The Schedules to this Ordinance shall be construed and have effect as part of this Ordinance.

Imp. § 168.

Repeal.

3. 1. The enactments described in the first Schedule are hereby repealed as from the commencement of this Ordinance to the extent mentioned in that Schedule. 2. After the passing of this Ordinance, no composition or liquidation by arrangement under Parts six and seven of *The Bankruptcy Ordinance, 1870* shall be entered into or allowed without the sanction of the Court; and such sanction shall not be granted, nor shall the approval of the Court be given to any composition or scheme under section thirty of the same Ordinance, unless the composition or liquidation or scheme appears to the Court to be reasonable and calculated to benefit the general body of creditors.

Imp. § 169. This section is not affected by Ord. No. 11 of 1902, § 1 (5). — In re Miles (1904) 8 S. S. L. R. 18.

Part I. Proceedings from Act of Bankruptcy to Discharge.

Acts of bankruptcy.

Acts of bankruptcy. 4. 1. [As amended by Ord. No. 34 of 1907, § 3, and Ord. No. 26 of 1908, § 2.] A debtor commits an act of bankruptcy in each of the following cases: a) If in the Colony or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally; b) If in the Colony or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof; c) If in the Colony or elsewhere he makes any conveyance or transfer of his property, or of any part thereof, or creates any charge thereon which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged bankrupt; d) If with intent to defeat or delay his creditors he does any of the following things, namely: departs out of the Colony, or being out of the Colony, remains out of the Colony, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house, or closes his place of business, or submits collusively or fraudulently to an adverse judgment or order for the payment of money; e) If execution issued against him has been levied by seizure of his property under process in an action, or in any civil proceeding in the Supreme Court or District Court, where the judgment, including costs, is for an amount exceeding one hundred dollars; f) If he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself; g) If he gives notice to any of his creditors that he has suspended, or that he is about to suspend payment of his debts; h) If he, after the first day of September, one thousand eight hundred and ninety-six, makes to any two or more of his creditors (not being partners) an offer of composition with his creditors, or a proposal for a scheme of arrangement of his affairs, and such offer or proposal is not followed by the registration within fourteen days thereafter of a deed of arrangement with his creditors, in accordance with the rules for the time being in force for the registration of deeds of arrangement under the Ordinance; i) If a creditor has obtained a final judgment against him for any amount, and execution thereon not having been stayed, has served on him in the Colony, or by leave of the Court elsewhere, a bankruptcy notice under this Ordinance requiring him to pay the judgment debt in accordance with the terms of the judgment or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not within seven days after service of the notice, in case the service is effected in the Colony, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counter-claim, set-off, or cross demand which equals or ex-

ceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained; j) If the sheriff makes a return that the debtor was possessed of no property liable to seizure; and for the purposes of this clause, the date when the writ is lodged with the sheriff shall be deemed to be the date of the act of bankruptcy. 2. A bankruptcy notice under this Ordinance shall be in the prescribed form, shall state the consequences of non-compliance therewith, and shall be served in the prescribed manner.

Imp. § 4. A composition deed actually accepted is not an act of bankruptcy. Prior to Ord. No. 8 of 1896 the offer of a composition did not come within subsection h). — In re Lim Tay Lin, Ex parte Official Assignee, (1892), 1 S. S. L. R. 30. The Court may inquire into the consideration for a judgment debt. As to a return of a sheriff, held good under subsection j), see In re Hadjee Arshad, (1893), 1 S. S. L. R. 107.

Meaning of debtor. 4A. [As added by Ord. No. 26 of 1908, § 3.] The word "debtor" in the preceding section shall be deemed to include any person, whether a British subject or not: a) Who is domiciled in the Colony; or b) Who within a year before the date of the presentation of the petition has ordinarily resided in or had a dwelling-house or place of business in the Colony; or c) Who though not himself personally within the Colony, carries on business by an agent within the Colony.

An act of bankruptcy must be a personal act or default by the principal, and can not be committed through an agent, unless the principal expressly or impliedly authorized the act of the agent. — In re Moona Roona Kana, Ex parte Mercantile Bank of India, Ltd., (1896), 4 S. S. L. R. 80.

Receiving order.

Jurisdiction to make receiving order. 5. Subject to the conditions hereinafter specified, if a debtor has committed an act of bankruptcy, the Court may, on a bankruptcy petition being presented, either by a creditor or by the debtor, make an order for the protection of the estate, which order is in this Ordinance called a receiving order.

Imp. § 5.

Conditions on which creditor may petition. 6. 1. A creditor shall not be entitled to present a bankruptcy petition against a debtor unless: a) The debt owing by the debtor to the petitioning creditor, or if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to one hundred dollars; and b) The debt is a liquidated sum, payable either immediately or at some certain future time; and c) The act of bankruptcy on which the petition is grounded has occurred within six months before the presentation of the petition; d) [Is repealed by Ord. No. 26 of 1908, § 4.] 2. If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case he may, to the extent of the balance of the debt due to him after deducting the value so estimated, be admitted as a petitioning creditor in the same manner as if he were an unsecured creditor.

Imp. § 6.

Proceedings and order on creditor's petition. 7. 1. A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and shall be served in the prescribed manner. 2. At the hearing the Court shall require proof of: a) The debt of the petitioning creditor; b) The act of bankruptcy, or if more than one act of bankruptcy is alleged in the petition, some one of the alleged acts of bankruptcy; and c) If the debtor does not appear, the service of the petition; and if satisfied with the proof, may make a receiving order in pursuance of the petition. 3. If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for some other sufficient cause no order ought to be made, the Court may dismiss the petition. 4. When the act of bankruptcy relied on is noncompliance with a bankruptcy notice to pay, secure, or compound for a judgment debt, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment. 5. Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court on such security, if any, being given as the Court may require for payment to the

petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt. 6. Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings, or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss on such terms as it thinks just the petition in which proceedings have been stayed as aforesaid. 7. A creditor's petition shall not after presentation be withdrawn without the leave of the Court.

Imp. § 7.

Debtor's petition and order thereon. 8. 1. A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy, without the previous filing by the debtor of any declaration of inability to pay his debts, and the Court shall thereupon make a receiving order. 2. A debtor's petition shall not after presentation be withdrawn without the leave of the Court.

Imp. § 8.

Effect of receiving order. 9. 1. On the making of a receiving order the official assignee shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Ordinance, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceeding in respect of such debt, unless with the leave of the Court, and on such terms as the Court may impose. 2. This section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed. 3. On a receiving order being made against a debtor he shall, within twenty-four hours after such order, file an affidavit in the office of the official assignee, containing a true and correct statement of the names and residences of all the partners, if any, in his business. Such statement shall, for the purposes of this Ordinance, be deemed to be part of the debtor's statement of his affairs referred to in section sixteen of this Ordinance. 4. On such order as aforesaid being made against a debtor, the official assignee shall forthwith take possession of all books of account and other papers and documents in the possession, custody, or control of the debtor relating to his property or affairs, and may take into his possession all or any deeds, books, documents, and other property of the bankrupt.

Imp. § 9.

Court may detain or order arrest of debtor, and commit him to prison, unless he gives security not to leave the Colony. 9A. On making a receiving order the Court, on application made by or on behalf of the petitioning creditor, or any other person claiming to be a creditor, may detain the debtor if he be present, and if he be not present, may order the debtor to be arrested and brought before the Court by warrant addressed to any police officer or officer of the Court, and unless the debtor when so detained or brought before the Court shall give security to the satisfaction of the Court that he will not leave the Colony without the previous permission in writing of the official assignee or of the Court, he may be committed to the civil prison and be there kept until the close of his public examination, or until the Court shall otherwise order. Provided that when a receiving order is made against a firm in the firm name no such warrant to arrest an alleged partner in the firm shall issue, except upon the application of the petitioning or some other creditor, and upon evidence on oath as to the persons who at the date of the receiving order are partners in the firm. If any person arrested shall deny that he is a partner, the Court shall order his release, unless the petitioning or other creditor shall give security to the satisfaction of the Court to meet the probable damages if such person be found not to be a partner. The cost of maintaining any debtor in prison under this section shall be prepaid by the applicant from time to time to the gaol authority, according to the cost of rations for the time being.

Discretionary powers as to appointment of receiver and stay of proceedings.

10. 1. The Court may, if it thinks it advisable for the protection of the estate, at any time after the presentation of a bankruptcy petition and before a receiving order is made, appoint the official assignee to be interim receiver of the property

of the debtor, or of any part thereof, and direct him to take immediate possession thereof, or of any part thereof, including all books of account, and other papers and documents belonging to the debtor and relating to his business. 2. The Court may at any time after the presentation of a bankruptcy petition, stay any action, execution, or other legal process against the property or person of the debtor.

Imp. § 10.

Service of order staying proceedings. 11. Where an order is made under the last preceding section, staying any action or proceeding, or staying proceedings generally, the order may be served by sending a copy thereof under the seal of the Court by prepaid registered post letter to the address for service of the plaintiff, or other party prosecuting such proceeding.

Imp. § 11.

Power to appoint special manager. 12. 1. The official assignee may, if satisfied that the nature of the debtor's estate or business, or the interests of the creditors generally, require the appointment of a special manager of the estate or business other than the official assignee, appoint a manager thereof accordingly to act until the first meeting of creditors, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official assignee. 2. The debtor may be appointed special manager. 3. The special manager shall give security and account in such manner as the official assignee, subject to the control of the Court, directs. 4. The special manager shall receive such remuneration as the official assignee within the prescribed limits, and subject to such control as aforesaid, determines.

Imp. § 12.

Advertisement of receiving order. 13. Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, and the date of the petition, shall be gazetted and advertised in a local paper in the prescribed manner.

Imp. § 13.

Power to Court to rescind receiving order in certain cases. 14. [As amended by Ord. No. 4 of 1911, § 1.] If in any case where a receiving order has been made on a bankruptcy petition it appears to the Court upon an application by the official assignee, or any creditor or other person interested, that a majority of the creditors in number and value are resident in any part of Her Majesty's dominions other than the Colony, or in the Federated Malay States, and that from the situation of the property of the debtor or for other causes, his estate and effects ought to be distributed among the creditors under the bankrupt or insolvent laws of that part of Her Majesty's dominions, or of the Federated Malay States, as the case may be the Court after such inquiry as to it seems fit, may rescind the receiving order, and stay all proceedings on or dismiss the petition upon such terms, if any, as it thinks fit.

Imp. § 14. A receiving order or an order for adjudication will be rescinded if the Court is satisfied that the conduct of the bankrupt both before and after the order was made was free from blame, and the interests of the creditors and the commercial morality have not suffered. — *In re Chop Tong Hin Guan*, (1906), 10 S. S. L. R. 81.

Proceedings consequent on order.

First and other meetings of creditors. 15. 1. As soon as may be after the making of a receiving order against a debtor, a general meeting of his creditors (in this Ordinance referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be entertained, or whether it is expedient that the debtor be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property. 2. With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the second Schedule shall be observed.

Imp. § 15.

Debtor's statement of affairs. 16. [As amended by Ord. No. 22 of 1900, § 2.] 1. Where a receiving order is made against a debtor, he shall make out and submit to the official assignee a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences, and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, the cause of his insolvency, the date when he last balanced his accounts before becoming insolvent, the amount of his capital at the date of such balance, after providing for all his liabilities and making allowance for bad and doubtful debts,

and such further or other information as is prescribed, or as the official assignee requires. 2. The statement shall be so submitted within the following times, namely: a) If the order is made on the petition of the debtor, within seven days from the date of the order; b) If the order is made on the petition of a creditor, within twenty-one days from the date of the order. But the official assignee may in either case for special reasons extend the time by order made under his hand, to be forthwith filed recording the reasons therefor. 3. If the debtor fails without reasonable excuse (proof whereof shall lie on him) to comply with the requirements of this section, he shall be guilty of a contempt of Court, and may be punished accordingly, and the Court may, on the application of the official assignee, or of any creditor, adjudge him bankrupt. 4. Any person stating himself in writing to be a creditor of the bankrupt, may personally or by agent inspect this statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the official assignee.

Imp. § 16.

Public examination of debtor.

Public examination of debtor. 17. 1. Where the Court makes a receiving order it shall hold a public sitting on a day to be appointed by the Court for the examination of the debtor, and the debtor shall attend thereat, and shall be examined before a judge in open Court as to his conduct, dealings, and property. 2. The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs, and after the first meeting of creditors. 3. The Court may adjourn the examination from time to time. 4. Any creditor who has tendered a proof, or his representative authorized in writing, may question the debtor concerning his affairs and the causes of his failure. 5. The official assignee shall take part in the examination of the debtor, and for the purpose thereof may, if specially authorized by the Government, under the hand of the Colonial Secretary, employ a solicitor with or without counsel, but no solicitor or counsel shall be allowed to take part in the examination on behalf of the debtor. 6. The Court may put such questions to the debtor as it thinks expedient. 7. The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court puts or allows to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing by the Registrar or Deputy Registrar, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor at all reasonable times. 8. When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded, but such order shall not preclude the Court from directing a further examination of the debtor as to his conduct, dealings, and property whenever it sees fit to do so.

Imp. § 17. The notes taken upon the public examination of a bankrupt may be admitted in evidence against the bankrupt in a prosecution for a criminal breach of trust. — *Regina v. Brown*, (1892), 1 S. S. L. R. 32.

Composition or scheme of arrangement.

Power for creditors to accept and Court to approve composition or arrangement.

18. 1. The creditors may by special resolution at the first meeting, or any adjournment thereof, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the debtor, or a proposal for a scheme or arrangement of the debtor's affairs. 2. The composition or scheme shall not be binding on the creditors unless it is confirmed at a subsequent meeting of the creditors by a resolution passed by a majority in number, representing three-fourths in value of all the creditors who have proved, and is approved by the Court. 3. Any creditor who has proved his debt may assent to or dissent from such composition or scheme by a letter addressed to the official assignee in the prescribed form, and attested by a witness, and sent or posted so as to be received by such official assignee not later than the day preceding such subsequent meeting, and a creditor so assenting or dissenting shall be taken as being present and voting at such meeting. 4. The subsequent meeting shall be summoned by the official assignee by not less than seven days' notice, and shall not be held until after the public examination of the debtor is concluded. The notice shall state generally the terms of the proposal,

and shall be accompanied by a report of the official assignee thereon. 5. The debtor or the official assignee may, after the composition or scheme is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given in the prescribed manner. Such application shall be made and heard in open Court. 6. The Court before approving a composition or scheme shall hear a report of the official assignee as to the terms of the composition or scheme, and as to the conduct of the debtor, and shall hear any objections which may be made by or on behalf of any creditor. 7. If the Court is of opinion that the terms of the composition or scheme are not reasonable, or are not calculated to benefit the general body of creditors, and in any case in which the Court is required under this Ordinance to refuse a bankrupt his discharge the Court shall, or if any such facts are proved as would under this Ordinance justify the Court in refusing, qualifying, or suspending the discharge, the Court may in its discretion refuse to approve the composition or scheme. 8. If the Court approves the composition or scheme, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the composition or scheme, or by the terms being embodied in an order of the Court. 9. A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy. 10. A certificate of the official assignee that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity. 11. The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court. 12. If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court on satisfactory evidence that the composition or scheme can not, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors, or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, any debt provable in other respects which has been contracted before the date of the adjudication shall be provable in the bankruptcy. 13. If under or in pursuance of a composition or scheme a trustee or assignee is appointed to administer the debtor's property, or manage his business or distribute a composition, Part IV of this Ordinance shall apply to such trustee or assignee as if he were an assignee in a bankruptcy, and as if the terms "bankruptcy," "bankrupt," and "order of adjudication" included respectively a composition or scheme or arrangement, a compounding or arranging debtor, and an order approving the composition or scheme. 14. Part III of this Ordinance shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "assignee," "bankruptcy," "bankrupt," and "order of adjudication" as in the last preceding subsection. 15. No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt. 16. The acceptance by a creditor of a composition or scheme shall not release any person who under this Ordinance would not be released by an order of discharge if the debtor had been adjudged bankrupt.

Imp. 53 & 54 Vic. c. 71, § 3. The receipt of dividends, both in a representative capacity and individually, and the signing of his name generally to receipts for such dividends is a sufficient assent by a creditor to a composition deed. — *McIntyre v. Galstaun*, (1843), 1 Kyshe, 67. A composition to pay less than 50% approved. — *In re Cavema Peria Tamby & Seema Tamby*, (1893), 1 S. S. L. R. 152.

Effect of composition or scheme. 19. Notwithstanding the acceptance and approval of a composition or scheme, such composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Ordinance, the debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Imp. § 19.

No deed of arrangement valid except under sections 18 or 22 unless registered.

19A. No deed of arrangement, except a composition or scheme entered into under section eighteen or section twenty-two hereof, shall be valid, unless the same shall have been registered at the office of the Registrar of Deeds within fourteen clear days after the first execution thereof by the debtor or any creditor, and unless the same shall be registered in accordance with the rules for the time being in force for the registration of deeds or arrangement under this Ordinance.

Imp. 50 & 51 Vic. c. 57, § 5. A deed of arrangement for the benefit of one class only of the creditors does not come within this section, and does not require registration. — (1904), 9 S. S. L. R. 39.

Penalty for collusive preference. 19B. 1. Every person who signs, or on whose behalf is signed, a deed of arrangement to which section 19A of this Ordinance applies, who shall on or within two months before or at any period after signing the same, receive any secret or collusive preference, gratuity, security, payment, or other consideration (all hereinafter included in the expression "gratuity") for concurring in or signing such deed of arrangement, shall be guilty of an offence punishable as hereinafter mentioned. 2. Every gratuity for concurring in or signing or having concurred in or signed a deed of arrangement, shall be deemed to be secret and collusive if the same or any promise for the same be not disclosed on the face of the deed of arrangement, or in a memorandum annexed to the deed at the time when the person who has received, or is to receive, such gratuity signs the deed of arrangement, which memorandum shall also be signed in acknowledgment of having seen the same by all the parties to the deed of arrangement before the registration thereof. A gratuity shall not be deemed to be secret or collusive if it is disclosed as before mentioned. 3. Every person committing an offence under this section shall be liable to a fine not exceeding five times the amount or value of the gratuity received by or promised to him, and the Court before which such person is tried may award a part of any such fine, not exceeding one-half thereof, to the informer through whom the conviction has been obtained, provided that such informer be not the debtor.

There must be no preference accorded to any creditor not acceded to by the whole body of creditors. Where such preference is given in order to induce the creditor to accept the terms of the composition, it is void, and money paid under it may be recovered. — *Tan Kok Seng v. Letchman Chetty*, (1866), 1 Kyshe, 162. The same rule applies if the preference is given by mistake. — s. c. (1867), 1 Kyshe, 170.

Power to Governor to make rules. 19C. It shall be lawful for the Governor in Council from time to time to make rules for the registration of deeds of arrangement under this Ordinance. Such rules shall provide for: a) The mode of registration; b) The form of the registers to be kept for the purpose of registration of deeds of arrangement under this Ordinance; c) The inspection of the registers and deeds registered, and the taking of copies and extracts of the same, and the custody of the registers and other documents connected with the business of registration; d) The fees to be taken in respect of registration of deeds of arrangement, and in respect of office copies or extracts and searches. All rules made under this section shall be laid on the table of the Legislative Council at its next meeting, and shall then be published in the *Gazette*, and shall have the same force and effect as if enacted in this Ordinance; but such rules shall not come into operation until a date to be fixed for that purpose by the Governor, which date shall be subsequent to the meeting of the Legislative Council next ensuing that at which such rules are so laid on the table, and any rule which is disapproved by a resolution of the Legislative Council shall not come into operation, or if it has come into operation, shall cease to have operation.

Rectification of registers. 19D. The Supreme Court, upon being satisfied that the omission to register a deed of arrangement within the time required by this Ordinance, or that the omission or misstatement of the name, residence, or description of any person was accidental or due to inadvertence, or to some cause beyond the control of the debtor, and not imputable to any negligence on his part, may, on the application of any party interested, and on such terms and conditions as are just and expedient, extend the time for such registration or order such omission or misstatement to be supplied or rectified by the insertion in the register of the true name, residence, or description.

Imp. 50 & 51 Vic. c. 57, § 9.

Adjudication of bankruptcy.

Adjudication of bankruptcy. 20. 1. At the time of making a receiving order the Court shall adjudge the debtor bankrupt, unless the debtor can show to the satisfaction of the Court that he is in a position to offer a composition or make a scheme of arrangement satisfactory to his creditors. Provided that when a receiving order is made against a firm in the firm name, the Court shall not adjudge any person bankrupt as a member of the firm, unless such person is proved to the satisfaction of the Court to be a partner by his own admission, or by evidence on oath. The Court may at any time on the application of the debtor himself by petition in writing (unstamped), to be forthwith filed, adjudge him bankrupt, and at the same time make a receiving order against him, and such application may be made without notice. 2. Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof, resolve by an ordinary resolution that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved in pursuance of this Ordinance within fourteen days after the conclusion of the examination of the debtor, or such further time as the Court allows, the Court shall adjudge the debtor bankrupt. 3. When a debtor is adjudged bankrupt his property shall become divisible among his creditors, and shall vest in the official assignee. 4. Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, and the date of the adjudication shall be gazetted and advertised in a local paper in the prescribed manner, and the date of the order shall, for the purposes of this Ordinance, be the date of the adjudication.

Imp. § 20. The Court will not make a receiving order where the debtor has no property within the jurisdiction. — *In re Govindasamy*, (1907), 10 S. S. L. R. 76.

Consultative committee. 21. 1. The creditors qualified to vote may at their first meeting, or any adjournment thereof, appoint by resolution from among the creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of one or more persons, not exceeding three, for the purpose of advising the official assignee on matters relating to the administration of the property of the bankrupt. 2. The official assignee may convene the committee at such times as he shall think necessary, and it shall be the duty of the official assignee to convene the committee whenever requested in writing to do so by all or a majority of the members of the committee. 3. Any member of the committee may resign his office by notice in writing signed by him, and delivered to the official assignee. 4. If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent for more than two months from the Settlement in which the bankruptcy proceedings are carried on, his office shall thereupon become vacant. 5. Any member of the committee may be removed by an ordinary resolution at any meeting of creditors, of which seven days notice has been given, stating the object of the meeting. 6. On a vacancy occurring in the office of a member of the committee, the official assignee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor or other person eligible as above to fill the vacancy.

Imp. § 22.

Power to accept composition or scheme after bankruptcy adjudication. 22. 1. Where a debtor is adjudged bankrupt, the creditors may, if they think fit, at any time after the adjudication by special resolution resolve to entertain a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs, and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme entertained at the first meeting of creditors. 2. If the Court approves the composition or scheme, it may make an order annulling the bankruptcy, and vesting the property of the bankrupt in him or in such other person as the Court appoints, on such terms and subject to such conditions, if any, as the Court declares. 3. If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme can not proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done under or in pursuance of the composition or

scheme. Where a debtor is adjudged bankrupt under this subsection, all debts provable in other respects which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

Imp. § 23.

Control over person and property of debtor.

Duties of debtor as to discovery and realization of property. 23. [As amended by Ord. No. 22 of 1900, § 3.] 1. Every debtor against whom a receiving order is made shall, unless prevented by sickness, or other sufficient cause, attend the first meeting of his creditors, and any subsequent meeting of his creditors which the official assignee requires him to attend, and shall submit to such examination and give such information as the meeting requires. 2. He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, wait at such times and places on the official assignee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the official assignee, or may be prescribed by general rules, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official assignee or any creditor or person interested. 3. He shall if adjudged bankrupt aid to the utmost of his power in the realization of his property, and the distribution of the proceed among his creditors, and amongst other things shall be bound, if required by the official assignee so to do, to answer all such questions and to submit to such medical examination, and to do all such other things as may be necessary for the purpose of effecting an insurance on his life. 4. If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property which is divisible amongst his creditors under this Ordinance, and which is for the time being in his possession, or under his control, to the official assignee, or to any person authorized by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

Imp. § 24.

Arrest of debtor under certain circumstances. 24. [As amended by Ord. No. 4 of 1910, § 3.] 1. The Court may by warrant addressed to any police officer or officer of the Court, cause a debtor to be arrested, and any books, papers, money, and goods in his possession to be seized, and him and them to be safely kept as prescribed, until such time as the Court may order, under the following circumstances: a) If after a bankruptcy notice has been issued under this Ordinance, or after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable reason for believing that he is in hiding or has absconded, or is about to abscond, with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy against him; b) If after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods, with a view of preventing or delaying possession being taken of them by the official assignee, or that there is probable ground for believing that he has concealed, or is about to conceal, or destroy any of his goods, or any books, documents, or writings which might be of use to his creditors in the course of his bankruptcy; c) If after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of twenty-five dollars, without the leave of the official assignee; d) If without good cause shown he fails to attend any examination ordered by the Court; e) If after presentation of a bankruptcy petition by or against him, the official assignee reports to the Court, or the Court is otherwise satisfied that there is probable reason for believing that the assets will not be sufficient to pay a dividend of fifty dollars per centum on the debts, or that there is probable reason for believing that the debtor has committed any offence punishable under the provisions of this Ordinance. Provided that no arrest upon a bankruptcy notice shall be valid and protected, unless the debtor before or at the

time of his arrest is served with such bankruptcy notice. 2. No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Ordinance relating to fraudulent preferences.

Imp. § 25.

Release of debtor on security; proceeds of security to fall into the estate of the debtor. 24A. [Added by Ord. No. 22 of 1900, § 4.] When a debtor is arrested under the provisions of the last preceding section he may be released by order of the Court, either with or without giving security to the satisfaction of the Court that he will not leave the Colony without the previous permission in writing of the official assignee or of the Court, or that he will not remove any of his goods, or conceal or destroy any of his goods or any books, documents, or writings which might be of use to his creditors in the course of his bankruptcy. The proceeds of the realization of any security given under this section or under section 9A of this Ordinance on breach by the debtor of any of the conditions of such security, shall be deemed to be the property of the debtor, and when he is adjudged bankrupt shall vest in the official assignee.

Redirection of letters and telegrams. 25. Where a receiving order is made against a debtor, the Court, on the application of the official assignee, may from time to time order that for such time not exceeding three months, as the Court thinks fit, telegrams and post letters addressed to the debtor at any place or places mentioned in the order for redirection, shall be redirected, sent, or delivered by the agent of the telegraph company, or by the postal authorities, as the case may be, to the official assignee, or otherwise as the Court directs, and the same shall be done accordingly.

Imp. § 26.

Discovery of debtor's property. 26. 1. The Court may, on the application of the official assignee, or of any creditor who has proved his debt at any time after a receiving order has been made against a debtor, summon before it the debtor or any wife of his, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property. 2. If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting, and allowed by it, the Court may by warrant cause him to be apprehended and brought up for examination. 3. The Court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or property. 4. If on the examination of any such person it appears to the Court that he is indebted to the debtor, the Court may, on the application of the official assignee, order him to pay to the official assignee at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount in question, or not, as the Court thinks fit, with or without costs of the examination. 5. If on the examination of any such person it appears to the Court that he has in his possession any property belonging to the debtor, the Court may, on the application of the official assignee, order him to deliver to the official assignee such property or any part thereof at such time and in such manner, and on such terms as to the Court seems just.

Imp. § 27. A person who is being examined under this section as to debts due by him is not entitled to counsel, but the official assignee or his counsel may examine the debtor. — In re Chou Hong, (1890), 4 Kyshe, 569. The Court may grant a discharge even though the bankrupt has not paid 50%. — In re Pooles, (1890), 4 Kyshe, 670.

Official assignee to settle list of debtors to the estate. 27. 1. The official assignee shall, as soon as may be after a receiving order has been made against a debtor, prepare and file in Court a list of persons supposed to be indebted to the debtor, with the amounts in which they are supposed to be so indebted set opposite to their names respectively. Before finally settling the name and amount of the debt of any person on such list, the official assignee shall give notice in writing to such person, stating that he has placed such person upon the list of debtors to the estate in the amount in the notice specified, and that unless such person on or before a

day in such notice specified, gives to the Registrar of the Court notice in writing of his intention to dispute his indebtedness, he will be deemed to admit that the amount set opposite his name in such list is due and owing by him to the debtor, and will be settled on such list accordingly. 2. A person included in such list who does not give notice of his intention to dispute his indebtedness, within the time limited in that behalf shall be settled upon such list, and execution may issue against him for the amount set opposite his name in such list in the same way as if judgment had been entered up against him for such amount in favour of the official assignee. 3. A certificate by the Registrar of the Court that the person named therein has been settled upon such list as a debtor to the estate in the amount in such certificate specified, shall be received as proof of the facts therein stated. 4. A person settled upon such list in manner aforesaid may apply to the Court in a summary way for leave to dispute his indebtedness, or the amount thereof, and the Court may, if it thinks fit, make such order for determining the question as may seem expedient upon the terms of such persons giving security for costs, and either paying into Court or giving security for the whole or such part of the alleged debt as under the circumstances may seem reasonable, and may stay all further proceedings.

Discharge of bankrupt.

Discharge of bankrupt. 28. [As amended by Ords. No. 22 of 1900, § 5 and No. 4 of 1911, § 4.] 1. A bankrupt may at any time after being adjudged bankrupt apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall be made and heard in open Court. Provided that where the debtor is resident out of the Colony, and is unable for want of means or for any other reason which the Court may consider sufficient, to return to the Colony, or where the debtor is a lunatic, or suffers from any such mental or physical affliction or disability as, in the opinion of the Court, make him unfit to attend his public examination, the Court may make an order dispensing with such examination, or directing that the debtor be examined on such terms, in such manner, and at such place as to the Court seems expedient. 2. On the hearing of the application, the Court shall take into consideration a report of the official assignee as to the bankrupt's conduct and affairs including a report as to the bankrupts conduct during the proceedings under his bankruptcy, and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property. Provided that the Court shall refuse the discharge in all cases where it is proved to the satisfaction of the Court that the bankrupt has committed any offence under this Ordinance, or under sections four hundred and twenty-one, four hundred and twenty-two, four hundred and twenty-three, or four hundred and twenty-four of the Penal Code, or under any amendment of such enactments, and shall on proof of any of the facts hereinafter in the next following subsection mentioned, either refuse the order or suspend the operation of the order for a specified time, or grant an order of discharge subject to such conditions as aforesaid. Provided that if at any time after the expiration of two years from the date of any conditional order made under this section, the bankrupt shall satisfy the Court that there is no reasonable probability of his being in a position to comply the terms of such order, the Court may modify the terms of the order, or any subsequent order, in such manner and upon such conditions, as it may think fit. 3. The facts hereinbefore referred to are: a) That the bankrupt has omitted to keep such books of account as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy, or within such shorter period immediately preceding that event as the Court deems reasonable in the circumstances; b) That the bankrupt has continued to trade after knowing or having reason to believe himself to be insolvent; c) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable ground of expectation (proof whereof shall lie on him) of being able to pay it; d) That the bankrupt has brought on or contributed to his bankruptcy by rash speculations or extravagance in living or by recklessness, or want of reasonable care and attention to his business and affairs; e) That the bankrupt has delayed or put any of his creditors to unnecessary

expense by a frivolous or vexatious defence to any action or other legal proceeding properly brought or instituted against him; f) That the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors; g) That the bankrupt has, in the Colony or elsewhere, on any previous occasion, been adjudged bankrupt, or made a composition or arrangement with his creditors; h) That the bankrupt has been guilty of any fraud or fraudulent breach of trust; i) That the bankrupt has, within three months immediately preceding the date of the receiving order, sent goods out of the Colony under circumstances which afford reasonable grounds for believing that the transaction was not a bona fide commercial transaction; j) That the bankrupt's assets are not of a value equal to fifty per centum on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to fifty per centum of his unsecured liabilities has arisen from circumstances for or in respect of which he can not justly be held blamable. 4. For the purposes of this section the report of the official assignee shall be prima facie evidence of the statements therein contained. 5. Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the Court shall hear the official assignee, and may also hear any creditor. At the hearing the Court may put such questions to the debtor and receive such evidence as it thinks fit. 6. The Court may, as one of the conditions referred to in this section, require the bankrupt to consent to judgment being entered against him by the official assignee for any balance or part of the balance of the debts provable under the bankruptcy which is not satisfied at the date of his discharge; but in such case execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has, since his discharge, acquired property or income available for payment of his debts. 7. A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the official assignee may require in the realization and distribution of such of his property as is vested in the official assignee, and if he fails to do so he shall be guilty of a contempt of court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done subsequent to the discharge but before its revocation. 8. For the purposes of this section, the following presumptions shall be made, that is to say: a) If at any time after the expiration of six months from the date of the adjudication, the official assignee reports to the Court that the value of the assets which have been realized, together with the estimated value of the assets which are realizable, is insufficient to pay a dividend of fifty dollars per centum on the debts proved in the bankruptcy, it shall be presumed (until the contrary be proved) that the bankrupt has continued to trade after knowing or having reason to believe himself to be insolvent; b) In determining whether a bankrupt was or knew or had reason to believe himself to be insolvent at any particular date, every debt owing to him by any person resident out of the jurisdiction, which debt had been at such date due for more than twelve months, shall be excluded from the computation of the value of the assets, and for the purpose of such computation shall be deemed not to be an asset; c) A bankrupt shall be deemed to have continued to trade after knowing or having reason to believe himself to be insolvent, if, having continued to trade after he was in fact insolvent he: i) Is unable to satisfy the Court that he had reasonable ground for believing himself to be insolvent; or ii) Fails without reasonable excuse (proof whereof shall lie on him) to produce a proper balance sheet for each of the three years immediately preceding the bankruptcy, every such balance sheet being made within a reasonable time after the expiration of the year to which it relates, and showing the true state of his affairs at the end of such year; d) Any preference given by the bankrupt to any creditor within the three months immediately preceding the date of the receiving order shall (until the contrary be proved) be deemed to be undue. This section shall be applicable to all bankrupts whether adjudicated bankrupt after or before the commencement of *The Bankruptcy Ordinance, 1888, Amendment Ordinance, 1896*.

Imp. 53 & 54 Vic. c. 71, § 8. See note to § 26, *supra*.

Fraudulent settlements. 29. In either of the following cases, that is to say:
1. In the case of a settlement made before or in consideration of marriage, where

the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or 2. In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife); if the settlor is adjudged bankrupt, or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable, having regard to the estate of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order, subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

Imp. § 29.

Effect of order of discharge. 30. 1. An order of discharge shall not release the bankrupt from any debt due to the Crown, or from any debt with which the bankrupt may be chargeable at the suit of the Crown, or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff, or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Government certifies in writing under the hand of the Colonial Secretary its consent to his being discharged therefrom. 2. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, or from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party. 3. An order of discharge shall release the bankrupt from all other debts provable in bankruptcy. 4. An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Ordinance and the special matter in evidence. 5. An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

Imp. § 30.

Part II. Disqualifications and Disabilities of Bankrupt.

Disqualifications of bankrupt. 31. 1. Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Ordinance, be disqualified for: a) Being nominated to or sitting or voting in the Legislative Council of the Colony, or on any committee thereof; b) Being appointed or acting as a judge, magistrate, or justice of the peace; c) Being nominated or elected to, or holding, or exercising the office of municipal commissioner. 2. The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when: a) The adjudication of bankruptcy against him is annulled; or b) He obtains from the Court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part. The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

Imp. § 32.

Vacating offices by bankruptcy. 32. If a person is adjudged bankrupt whilst holding the office of member of the Legislative Council, judge, magistrate, justice of the peace, or municipal commissioner, his office shall thereupon become vacant.

Imp. §§ 33, 34.

Undischarged bankrupt.

Consequences of refusal of discharge. 33. 1. Where a bankrupt has not obtained his discharge, the following consequences shall ensue: a) The bankrupt shall be incompetent to maintain any action (other than an action for damages in respect of any injury to his person) without the previous sanction of the official assignee; b) The bankrupt shall once in every six months render to the official assignee an account of all moneys and property which have come to his hands for his own use during the preceding six months; and shall pay and make over to the official assignee so much of the same moneys and property as shall not have been

expended in the necessary expenses of maintenance of himself and his family; c) The bankrupt shall not leave the Colony without the previous permission of the official assignee of the Court. 2. A bankrupt who makes default in performing or observing the provisions of this section shall be deemed guilty of a contempt of Court, and shall be punished accordingly on the application of the official assignee.

List of undischarged bankrupts to be kept. 34. A list of undischarged bankrupts shall be kept by the official assignee, and shall be published in the *Government Gazette* at such times as the Governor may direct, but not less than once in each year.

Part III. Administration of Property.

Proof of debts.

Description of debts provable in bankruptcy. 35. 1. Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust shall not be provable in bankruptcy. 2. A person having notice of any act of bankruptcy available against the debtor shall not prove under the receiving order for any debt or liability contracted by the debtor subsequently to the date of his so having notice. 3. Save as aforesaid, all debts and liabilities present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy. 4. An estimate shall be made by the official assignee of the value of any debt or liability provable as aforesaid which, by reason of its being subject to any contingency or contingencies, or for any other reason does not bear a certain value. 5. Any person aggrieved by any estimate made by the official assignee as aforesaid may appeal to the Court. 6. If in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall for the purposes of this Ordinance be deemed to be a debt not provable in bankruptcy. 7. If in the opinion of the Court the value of the debt or liability is capable of being fairly estimated, the Court may assess the same, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy. 8. "Liability" shall for the purposes of this Ordinance include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of money or money's worth, whether the payment is as respects amount fixed or unliquidated, or as respects time present or future, certain or dependent on any one contingency or on two or more contingencies, or as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

Imp. § 37. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied. — Ord. No. 11 of 1902, § 3.

Mutual credit and set-off. 36. Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order is made under this Ordinance, and any other person proving or claiming to prove a debt under such order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account and no more shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor notice of an act of bankruptcy committed by the debtor and available against him.

Imp. § 38. Where a bill is drawn by one branch bank on another branch, and remitted to a person in payment of a debt due to him, and before the bill is presented for payment the person to whom it was remitted, and who is the holder thereof, becomes bankrupt, the bank is entitled

to set off the amount of the bill in reduction of its claims against the bankrupt holder. Such a transaction constitutes a mutual dealing between the bank and the bankrupt. — *In re Lim Tiang Wah*, Ex parte Chartered Mercantile Bank, (1887), 4 Kyshe, 281; *Chartered Mercantile Bank v. Gunn*, (1889), 1 S. L. J. 108.

Rules as to proof of debts. 37. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the third Schedule, the rules in that Schedule shall be observed.

Imp. § 39.

Priority of debts; interest. 38. [As amended by Ord. No. 22 of 1900, § 6.] 1. In the distribution of the property of a bankrupt there shall be paid in priority to all other debts: a) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt during the four months next before the date of the receiving order, not exceeding two hundred and fifty dollars for each clerk or servant; and b) All wages of any labourer or workman, not exceeding two hundred and fifty dollars for each, whether payable for time or piece work, in respect of services rendered to the bankrupt during the four months next before the date of the receiving order; c) Any sum of money due at the date of the receiving order from the bankrupt to the Municipal Commissioners in respect of rates or taxes for the current year under the provisions of *The Municipal Ordinance, 1896*. 2. The foregoing debts shall rank equally between themselves, and shall be paid in full unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves. 3. In the case of partners, the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. 4. Subject to the provisions of this Ordinance all debts proved in the bankruptcy shall be paid *pari passu*. 5. If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of eight dollars per centum per annum on all debts proved in the bankruptcy. 5A. Where a debt has been proved upon a debtor's estate and such debt includes interest or any pecuniary consideration in lieu of interest, such interest, or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding eight per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full. 6. Nothing in this section shall alter the effect of section five of the Act 28 & 29 Victoria, chapter 86 "to amend the Law of Partnership." 7. Where an interim receiver has been appointed before the making of the receiving order, the date of such appointment shall, for the purposes of this section, be deemed to be the date of the receiving order.

Imp. § 40; 51 & 52 Vic. c. 62, § 1; 53 & 54 Vic. c. 71, § 23. The Imp. Act 28 & 29 Vic. c. 86 is repealed. See now the Imp. Act 53 & 54 Vic. c. 39.

Preferential claim in case of apprenticeship, and in respect of passage money.

39. 1. Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articulated clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt, or apprentice, or clerk gives notice in writing to the official assignee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the official assignee may, on the application of the apprentice, or clerk, or of some person on his behalf, pay such sum as the official assignee, subject to an appeal to the Court, thinks reasonable out of the bankrupt's property to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case; provided that where it appears expedient to the official assignee, he may, on the application of any apprentice or articulated clerk to the bankrupt, or of some person on his behalf, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

2. Where at the date of the receiving order any person is in the employment of the bankrupt who came to the Colony for the purpose of entering into such employment, either under any contract to serve the bankrupt for a period of not less than one year, which period has not elapsed three months before the date of such order, or under a contract either absolutely or conditionally that such person shall be provided with a passage to another country on the determination of his employment, and such person has not obtained other employment, and is desirous of leaving the Colony, the Court may, if it should seem just and expedient under all the circumstances of the case, direct the official assignee to provide for such person such passage as he is entitled to under the contract, or if he be not so entitled, then a suitable passage to the country whence he came for the purpose, of entering into such employment, or in either case any other not more costly passage which such person may desire.

Power to landlord to distrain for rent. 40. 1. Subject to the provisions of *The Distress Ordinance, 1876*, the landlord or other person to whom any rent is due from the bankrupt, may at any time either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy, it shall be available only for three months rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available. 2. For the purposes of this section the term "order of adjudication" shall be deemed to include an order for the administration of the estate of a debtor whose debts do not exceed five hundred dollars, or of a deceased person who dies insolvent.

Imp. § 42.

Property available for payment of debts.

Relation back of assignee's title. 41. The bankruptcy of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor, shall be deemed to have relation back to and to commence at the time of the act of bankruptcy being committed on which a receiving order is made against him, or if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and to commence at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within twelve months next preceeding the date of the adjudication; but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

Imp. § 43.

Description of bankrupt's property divisible amongst creditors. 42. The property of the bankrupt divisible among his creditors and in this Ordinance referred to as the property of the bankrupt, shall not comprise the following particulars: 1. Property held by the bankrupt on trust for any other person; 2. The tools, if any, of his trade, and the necessary wearing apparel and bedding and other like necessities of himself, his wife and children, to a value, inclusive of tools and apparel and the other things aforesaid, not exceeding one hundred dollars in the whole. But it shall comprise the following particulars: 1. All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and 2. The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and 3. Subject to the provisions of subsection three of section six of *The Bills of Sales Ordinance, 1886*, all goods being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt by the consent and permission of the true owner under such circumstances that he is the reputed owner thereof. Provided that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

Imp. § 44. The Bills of Sale Ordinance provides that every bill of sale shall be duly attested and shall be registered under this Ordinance within three clear days after the execution thereof, or if it is executed in any place out of the Settlement where it is required by this Ordinance to

be registered, then within three clear days after the time at which it would in the ordinary course of post arrive in the Settlement if posted immediately after the execution thereof, and shall truly set forth the consideration for which it was given, otherwise the following consequences shall ensue, that is to say: a) in the case of a bill of sale made or given by way of security for the payment of money by the grantor thereof such bill of sale shall be void in respect of the personal chattels comprised therein; and b) in the case of any other bill of sale it shall as against all trustees or assignees of the estate of the person whose chattels or any of them are comprised in such bill of sale under the law of bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriff's officers and other persons seizing any chattels comprised in such bill of sale in the execution of any process of any Court authorizing the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which at or after the time of filing the petition for bankruptcy or liquidation or of the execution of such assignment or of executing such process, as the case may be, and after the expiration of such three days, are in the possession or apparent possession of the person making such bill of sale or of any person against whom the process has issued under or in the execution of which such bill has been made or given as the case may be. Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale so long as they remain or are in or upon any house, warehouse, shop, building, vessel, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken or given by or to any other person. Personal chattels comprised in a valid bill of sale which is duly attested and registered under this Ordinance shall not so long as such bill of sale continues to be duly registered under this Ordinance be deemed to be in the possession, order or disposition of the grantor of the bill of sale within the meaning of the law of bankruptcy. Provided that this subsection shall not apply to personal chattels in the possession, order, or disposition of the grantor in his trade or business. — Ord. No. 12 of 1886, § 6. The assignee of a bill of sale may be entitled to the goods thereunder, although the bill of sale was as to his assignor a fraudulent preference. — *Mootoo Curpen Chetty v. Finlayson*, (1878), 2 Kyshe (Bankr.), 17. See further as to bills of sale: *In re Shaik Mohamed Bin Aboobakar Bagaffar*, *Ex parte Vennettrittan Chetty*, (1878), 2 Kyshe (Bankr.), 14; *Rigold, Bergmann & Co. v. Wong Peng Lam*, (1901), 6 S. S. L. R. 90.

Effect of bankruptcy on antecedent transactions.

Restriction of rights of creditor under execution or attachment. 43. 1. Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due or property belonging to him, he shall not be entitled to retain the benefit of the execution or attachment against the official assignee, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor. 2. For the purposes of this Ordinance, an execution against goods or land is completed by seizure and sale, or in the case of an equitable interest in land, by the appointment of a receiver; an attachment of a debt is completed by receipt of the debt; and an attachment of property is completed by the sale of such property, and the satisfaction out of the proceeds of such sale of the judgment in execution of which the attachment is made.

Imp. § 45.

Duties of sheriff as to property taken in execution. 44. [As amended by Ords. No. 22 of 1900, § 7, and No. 34 of 1907, § 4.] 1. Where any property of a debtor is taken in execution under a writ of seizure and sale, and before the sale and realization thereof, or the completion of the execution by the receipt or the recovery of the full amount of the levy, or the delivery to the execution creditor of any moneys seized or paid in order to avoid sale, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall deliver the property or the possession thereof, and any money seized or received in part satisfaction of the execution, and any such moneys to the official assignee, but the costs of and incidental to the execution shall be a first charge on such property or money, and the official assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge. 2. Where a writ of seizure and sale has been issued in respect of a judgment for a sum exceeding one hundred dollars, the sheriff shall hold all moneys coming to his hands under such writ of seizure and sale for fourteen days from the receipt thereof, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon, or on any other petition of which the sheriff has notice, the sheriff shall deduct the costs of and incidental to the

execution and pay the balance to the official assignee, who shall be entitled to retain the same as against the execution creditor. 3. An execution levied by seizure and sale on property of a debtor is not invalid by reason of the seizure being an act of bankruptcy, and a person who purchases the property in good faith under a sale by the sheriff shall in all cases acquire a good title to it against the official assignee. 4. Where the act of bankruptcy upon which a bankruptcy petition is founded is the seizure of any property under a judgment, and the debtor has had a receiving order made against him on such petition, then the costs of the judgment creditor incurred by him in obtaining such judgment during the thirty days next preceding the taking of the property in execution shall be payable out of the assets of the bankrupt in the same manner and in the same order of priority as the costs of the petitioning creditor.

Imp. § 46. In (2) "costs of execution" includes the costs of the execution creditor of the writ under which a seizure and sale is made. — *M. A. Abdul Guffoor v. Chop Yong Nam Hong*, (1903), 8 S. S. L. R. 16. The proceeds of a sale of the property of a judgment debtor, handed to the assignee by the sheriff vest on adjudication in the assignee, free from any claim for rent due after the act of bankruptcy. — *In re Bird, Exparto Ezra*, (1902), 7 S. S. L. R. 74.

Avoidance of voluntary settlements. 45. 1. Any settlement of property (not being a settlement made before and in consideration of marriage, or a settlement made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife) shall, if the settlor becomes bankrupt within two years after the date of the settlement, be absolutely void against the official assignee, and shall if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement be void against the official assignee, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof. 2. Any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the official assignee. 3. "Settlement" for the purposes of this section includes any conveyance or transfer of property, bill, bond, note, security for money, or covenant for the payment of money, and any gift of money. 4. For the purposes of this section a settlor who dies insolvent shall be deemed to have become bankrupt at the date of his death. 5. This section applies to settlements made either before or after the commencement of this Ordinance.

Imp. § 47.

Avoidance of preferences in certain cases. 46. 1. Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the official assignee. 2. This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Imp. § 48. Under the Indian Insolvency Act (6 Vic., c. 21) § 24, the question to be determined was whether the payment was voluntary or made under pressure. — *Smith v. Behn, Meyer & Co.*, (1854), 1 Kyshe, 101. Under 13 Eliz., c. 5 it was held that a transfer by a judgment debtor to a creditor in order to defeat an execution on a judgment in favour of another creditor is not necessarily fraudulent, although made with intent to hinder and delay the judgment creditor, and to give a preference to the other creditor. — *Syed Abbas Bin Hussein Audeed v. Scott*, (1842), 1 Kyshe, 64. Under the present Act the question to be determined in every case is whether the substantial motive inducing the debtor to make the conveyance was to give to the transferee a preference over other creditors. If the substantial motive is to avoid evil consequences to the transferor himself, then the conveyance is not fraudulent and void, even though an actual preference is given. — *Kershaw v. Rowell*, (1891), 1 S. S. L. R. 12.

Protection of bona fide transactions without notice. 47. Subject to the foregoing provisions of this Ordinance with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in this Ordinance shall invalidate in the case of a bankruptcy: a) Any payment by the bankrupt to any of his creditors; b) Any payment or delivery to the bankrupt; c) Any conveyance or assignment by the bankrupt for valuable consideration; d) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration. Provided that both the following conditions are complied with, namely: 1. The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and 2. The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction notice of any available act of bankruptcy committed by the bankrupt before that time.

Imp. § 49. Taking property subject to the payment of a small annual quit rent to the Crown does not constitute the transferee a purchaser for value. — *Yeoh Siew Bee Neo v. Lee Teng See*, (1894), 2 S. S. L. R. 77. See also, *In re Lim Tay Lin, Ex parte Official Assignee*, (1892), 1 S. S. L. R. 30. Under the Married Women's Property Ordinance it is provided that nothing in that Ordinance contained shall give validity as against creditors of the husband to any gift by a husband to his wife of any property which after such gift shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if that Ordinance had not been passed. — Ord. No. 11 of 1902, § 6.

Realization of property.

Possession of property by assignee. 48. 1. The official assignee shall forthwith after the adjudication take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery. 2. The official assignee shall in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt be in the same position as if he were a receiver of the property appointed by the Court, and the Court may on his application enforce such acquisition or retention accordingly. 3. Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the official assignee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt. 4. Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the official assignee. 5. Any treasurer or other officer, or any banker, attorney, or agent of a bankrupt shall pay and deliver to the official assignee all money and securities in his possession or power as such officer, banker, attorney, or agent which he is not by law entitled to retain as against the bankrupt or the official assignee. If he does not, he shall be guilty of a contempt of Court, and may be punished accordingly on the application of the official assignee.

Imp. § 50. A banker has a lien on all papers of a customer which have come into his possession in the ordinary course of his business as a banker. — *In re Purvis, Ex parte Oriental Bank*, (1866), 2 Kyshe (Bankr.), 12.

Seizure of property of bankrupt. 49. Any person acting under warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt, or of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any police officer or officer of the Court, who may execute it according to its tenor in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

Imp. § 51.

Appropriation of portion of pay or salary to creditors. 50. 1. Where a bankrupt is an officer of the army or navy, or an officer or clerk, or otherwise employed or engaged in the civil service of the Crown, the official assignee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the

Court on the application of the official assignee, with the consent of the chief officer of the department under which the pay or salary is enjoyed may direct. Before making any order under this subsection, the Court shall communicate with the chief officer of the department as to the amount, time, and manner of the payment to the official assignee, and shall obtain the written consent of the chief officer to the terms of such payment. 2. Where a bankrupt is in the receipt of a salary or income other than as aforesaid, or is entitled to any half-pay, or pension, or compensation granted by the Government, the Court on the application of the official assignee shall, subject to the provisions of any enactment for the time being regulating the grant and payment of pensions from time to time, make such order as it thinks just for the payment of the salary, income, half-pay, pension or compensation, or of any part thereof, to the official assignee to be applied by him in such manner as the Court may direct. 3. Nothing in this section shall take away or abridge any power of the Government to dismiss a bankrupt or to declare the pension, half-pay, or compensation of any bankrupt to be forfeited.

Imp. § 53.

Vesting and transfer of property. 51. [As amended by Ord. No. 9 of 1910, § 3.]

1. The property of the bankrupt shall pass from official assignee to official assignee, and shall vest in the official assignee for the time being during his continuance in office without any conveyance, assignment, or transfer whatever. 2. All dealings with property on any Settlement which has been, is, or shall be vested under this Ordinance in the official assignee for the time being, and all deeds, agreements, instruments, acts, and things necessary or expedient for the purposes of such dealings as aforesaid shall, if the same have been or shall be transacted, made, entered into, signed, perfected, or done by an officer appointed for the time being under section 63 to act in such Settlement for or in place of the Official Assignee, or to be an assistant official assignee therein, be deemed to have been and shall be of the same force and effect and as valid to all intents and purposes as the same would have been or would be if transacted, made, entered into, signed, perfected, or done by the official assignee personally.

Imp. § 54.

Disclaimer of onerous property. 52. 1. Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the official assignee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section may, by writing signed by him, at any time, disclaim the property. 2. The disclaimer shall operate to determine as from the date of disclaimer the rights, interests, and liabilities of the bankrupt, and his property in or in respect of the property disclaimed, and shall also discharge the official assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the official assignee from liability, affect the rights or liabilities of any other person. 3. The official assignee shall not be entitled to disclaim a lease without the leave of the Court, except in any cases which may be prescribed by general rules, or where all persons interested in the property consent to such disclaimer, and the Court may before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy as the Court thinks just. 4. The official assignee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to him by any person interested in the property, requiring him to decide whether he will disclaim or not, and he has for a period of three days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and in the case of a contract, if the official assignee after such application as aforesaid does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it. 5. The Court may on the application of any person who is as against the official assignee entitled

to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract or otherwise, as to the Court may seem equitable; and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy. 6. The Court may on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Ordinance in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made the property comprised therein shall vest accordingly in the person therein named in that behalf, without any conveyance or assignment for the purpose. Provided always that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there shall be no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt. 7. Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

Imp. § 55.

Powers of assignee to deal with property. 53. Subject to the provisions of this Ordinance, the official assignee may do all or any of the following things: 1. Sell all or any part of the property of the bankrupt (including the goodwill of his business, if any, and the book debts due or growing due to him) by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels; 2. Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof; 3. Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt; 4. Exercise any powers the capacity to exercise which is vested in the official assignee under this Ordinance, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Ordinance; 5. Deal with any property to which the bankrupt is beneficially entitled as tenant in tail or other owner of an estate of inheritance less than an estate in fee simple, in the same manner as the bankrupt might have dealt with it; and any such dealing with any property to which the bankrupt is before his discharge so entitled shall, although the bankrupt be dead at the time of that dealing, be as valid and have the same operation as though the bankrupt were then alive.

Imp. § 56.

Powers exercisable by assignee subject to orders of Court. 54. The official assignee may, subject to any general or special orders of the Court, do all or any of the following things: 1. Carry on the business of the bankrupt so far as may be necessary for the beneficial winding-up of the same; 2. Bring, institute, or defend any action, or other legal proceeding relating to the property of the bankrupt; 3. Employ, with the permission in writing of the Colonial Secretary, a solicitor or other agent to take any proceedings or do any business; 4. Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as he thinks fit; 5. Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts; 6. Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or

contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums payable at such times and generally on such terms as may be agreed on; 7. Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy; 8. Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt made or capable of being made on the official assignee by any person or by the official assignee on any person; 9. Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances can not be readily or advantageously sold.

Imp. § 57.

Distribution of property.

Declaration and distribution of dividends. 55. 1. Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the official assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts. 2. The first dividend, if any, shall be declared and distributed within four months after the adjudication, unless the official assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date. 3. Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months. 4. Before declaring a dividend, the official assignee shall cause notice of his intention to do so to be gazetted, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt. 5. When the official assignee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate. 6. No dividend shall be paid to any creditor which does not amount to fifty cents.

Imp. § 58.

Joint and separate dividends. 56. 1. Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm or any of them shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts. 2. Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of the official assignee, or any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the official assignee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Imp. § 59.

Provision for creditors residing at a distance, etc. 57. In the calculation and distribution of a dividend the official assignee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements or otherwise to be due to persons resident in places so distant from the place where the official assignee is acting, that in the ordinary course of communication they have not had sufficient time to tender their proofs or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined. He shall also make provision for any disputed proofs or claims and for the expenses necessary for the administration of the estate or otherwise, and subject to the foregoing provisions, he shall distribute as dividend all money in hand.

Imp. § 60.

Right of creditor who has not proved debt before declaration of a dividend. 58. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the official assignee, any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved, by reason that he has not participated therein.

Imp. § 61.

Final dividend. 59. When the official assignee has realized all the property of the bankrupt, or so much thereof as can in his opinion be realized without needlessly protracting the proceedings in bankruptcy, he shall declare a final dividend; but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or if the Court on application by any such claimant grants him further time for establishing his claim, then on the expiration of such further time the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

Imp. § 62.

No action for dividend. 60. No action for a dividend shall lie against the official assignee, but if he refuses to pay any dividend the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Imp. § 63.

Power to allow bankrupt to manage property; allowance to bankrupt for maintenance or service. 61. 1. The official assignee may appoint the bankrupt himself to superintend the management of the property of the bankrupt, or any part thereof, or to carry on the trade, if any, of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee may direct. 2. The official assignee may from time to time make such allowance as he thinks just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but the Court may reduce any such allowance and limit the time for which it may be made.

Imp. § 64.

Right of bankrupt to surplus. 62. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest as by this Ordinance provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

Imp. § 65.

Part IV. Official Assignees.

Appointment and removal.

Appointment of official assignees of debtor's estates. 63. 1. The Governor may at any time after the passing of this Ordinance, and from time to time, appoint such person or persons as he thinks fit by name or office to be official assignee or assignees of debtors' estates, and may remove any person so appointed from such office. The official assignees shall act under the general authority and directions of the Government, but shall also be officers of the Court. 2. The number of official assignees so to be appointed, and the districts to be assigned to them shall be fixed by the Governor in Council. One person only shall be appointed for each Settlement, but the same person may be appointed to act for more than one Settlement. 3. The Governor may from time to time appoint by name or office such other officers, either temporary or permanent, as he may think necessary for carrying into effect the provisions of this Ordinance, and may assign to them such duties as he may think fit, and may remove any such officer from office.

Imp. § 66.

Duties.

Status of official assignee. 64. 1. The duties of the official assignee shall have relation both to the conduct of the debtor and to the administration of his estate. 2. An official assignee may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Ordinance, administer oaths. 3. Official assignees shall be deemed to be public servants within the meaning of the Penal Code.

Imp. § 68.

Duties of official assignee as regards the debtor's conduct. 65. As regards the debtor, it shall be the duty of the official assignee: 1. To investigate the conduct of the debtor, and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes an offence under this

Ordinance, or under sections four hundred and twenty-one, four hundred and twenty-two, four hundred and twenty-three, and four hundred and twenty-four of the Penal Code, or any amendment thereof, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge; 2. To make such other reports concerning the conduct of the debtor as the Court may direct, or as may be prescribed; 3. To take such part as may be directed by the Court, or be prescribed, in the public examination of the debtor; 4. To take such part and give such assistance in relation to the prosecution of any fraudulent debtor, or any other person charged with an offence under this Ordinance, as the Court may direct, or as may be prescribed.

Imp. § 69.

Duties of official assignee as to debtor's estate. 66. 1. As regards the estate of a debtor, it shall be the duty of the official assignee: a) To act as receiver of the debtor's estate, and to act as manager thereof where a special manager has not been appointed; b) To raise money or make advances for the purposes of the estate, and to authorize the special manager to raise money or make advances for the like purposes in any case where, in the interests of the creditors, it appears necessary so to do; c) To summon and preside at all meetings of creditors held under this Ordinance; d) To issue forms of proxy for use at the meetings of creditors; e) To report to the creditors as to any proposal which the debtor makes with respect to the mode of liquidating his affairs; f) To advertise the receiving order, the date of the debtor's public examination, and such other matters as it may be necessary to advertise. 2. For the purpose of his duties as receiver or manager, the official assignee shall have the same powers as if he were a receiver and manager appointed by the Court, but shall as far as practicable consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors. 3. The official assignee shall account to the Court and pay over all moneys, and deal with all securities in such manner as subject to the provisions of this Ordinance the Court from time to time directs.

Imp. § 70.

Costs.

Allowance and taxation of costs. 67. 1. No payment shall be allowed in the accounts of the official assignee, or of any special manager in respect of the performance by any other person of the ordinary duties which are required by this Ordinance, or any rules made thereunder to be performed by himself. 2. All bills and charges of solicitors, managers, accountants, auctioneers, brokers, and other persons shall be taxed by the prescribed officer, and no payment in respect thereof shall be allowed in the accounts of the official assignee without leave of the Court given after such taxation has been made. 3. Every such person shall, on request by the official assignee (which request the official assignee shall make a sufficient time before declaring a dividend) deliver his bill of costs or charges to the prescribed officer for taxation, and if he fails to do so within seven days after receipt of the request, or such further time as the Court, on application, may grant, the official assignee, shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the official assignee personally as against the estate.

Imp. § 73. As to security for costs in a bankruptcy, see *Nairne v. Tunka Muda Hussain*, (1872), 1 Kyze, 325.

Receipts, payments, accounts, audit.

Payment of money into Treasury. 68. 1. An account called the Bankruptcy Estates Account shall be kept with the Treasury, in accordance with such rules as the Governor in Council may from time to time prescribe, and all moneys received by the Court in respect of proceedings under this Ordinance shall be paid to that account. 2. The official assignee shall in such manner, and at such times as the Court, with the concurrence of the Governor in Council directs, pay the money received by him on account of estates in bankruptcy into Court to the credit of the Bankruptcy Estates Account, and the Court shall furnish him with a certificate of receipt of the money so paid. 3. If an official assignee at any time retains for more than ten days a sum exceeding two hundred and fifty dollars or such other amount as the Court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest

on the amount so retained in excess at the rate of twenty dollars per centum per annum, and shall be liable to pay any expenses occasioned by reason of his default, and submit to such other consequences as may be prescribed. 4. All payments out of money standing to the credit of the Bankruptcy Estates Account shall be made in the prescribed manner on the order of the prescribed officer.

Imp. § 74.

Assignee not to pay into private account. 69. An official assignee shall not pay any sums received by him as official assignee into his private banking account.

Imp. § 75.

Investment of surplus funds. 70. 1. Whenever the cash balance standing to the credit of the Bankruptcy Estates Account is in excess of the amount which, in the opinion of the Court, is required for the time being to answer demands in respect of bankrupts' estates, the Court may order such excess to be invested, whereupon the Accountant-General shall invest the said sums, or any part thereof, in securities, in which Court moneys may for the time being be lawfully invested, to be placed to the credit of the said account. 2. Whenever any part of the money so invested is in the opinion of the Court required to answer any demands in respect of bankrupts' estates, the Court shall notify to the Accountant-General the amount so required, who shall thereupon raise such sum by the sale of such part of the said securities as may be necessary. 3. The dividends on the investments under this section shall be paid to such account as the Governor in Council may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings.

Imp. § 76.

Audit of assignee's accounts. 71. 1. Every official assignee shall at such times as may be prescribed (but during his tenure of office not less than twice in each year) send to the Governor, or as he directs, an account of his receipts and payments as such official assignee. 2. The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form. 3. The accounts so sent shall be audited by such officer as the Governor may from time to time appoint in this behalf, and for the purposes of the audit the official assignee shall furnish the auditing officer with such vouchers and information as he may require, and the auditing officer may at any time require the production of and inspect any books or accounts kept by the official assignee. 4. When any such account has been audited, one copy thereof shall be sent to and filed by the Colonial Secretary, and the other copy shall be filed in the Court, and each copy shall be open to the inspection of any creditor or of the bankrupt, or of any person interested.

Imp. § 78.

Assignee to furnish list of creditors. 72. The official assignee shall, whenever required by any creditor so to do, and on the payment by such creditor of the prescribed fee, furnish and transmit to such creditor a list of the creditors showing in such list the amount of the debt due to each of such creditors.

Imp. § 79.

Books to be kept by assignee. 73. The official assignee shall keep in manner prescribed proper books in which he shall from time to time cause to be made entries of minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent, inspect any such books.

Imp. § 80.

Periodical statement of proceedings. 74. 1. Every official assignee shall from time to time as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the Governor a statement showing the proceedings in the bankruptcy up to the date of the statement containing the prescribed particulars and made out in the prescribed form. 2. The Governor shall cause the statements so transmitted to be examined, and shall call the official assignee to account for any misfeasance, neglect, or omission which may appear on the said statements, or in his accounts, or otherwise, and may require the official assignee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission. 3. Such statements shall be filed in the office of the official assignee, and shall be open to the inspection of the public.

Imp. § 81.

Release.

Release of assignee. 75. 1. When the official assignee has realized all the property of the bankrupt, or so much thereof as can in his opinion be realized without needlessly protracting the proceedings in bankruptcy, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has vacated or been removed from his office, the Court shall on his application cause a report on his accounts to be prepared, and on his complying with all the requirements of the Court shall take into consideration the report and any objection which may be urged by any creditor or person interested against the release of the official assignee, and shall either grant or withhold the release accordingly. 2. Where the release of an official assignee is withheld, the Court may on the application of any creditor or person interested, make such order as it thinks just, charging the official assignee with the consequences of any act or default he may have done or made contrary to his duty. 3. An order of the Court releasing the official assignee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt or otherwise in relation to his conduct as official assignee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

Imp. § 82.

Official name.

Official name of assignee. 76. The official assignee may sue and be sued by the official name of "the official assignee of the property of a bankrupt," inserting the name of the bankrupt, and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself, and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Imp. § 83.

Vacation of office on insolvency.

Office of assignee vacated by insolvency. 77. If a receiving order is made against an official assignee, he shall thereby vacate the office of official assignee.

Imp. § 85.

Control.

Discretionary powers of official assignee and control thereof. 78. 1. Subject to the provisions of this Ordinance, the official assignee shall in the administration of the property of the bankrupt have regard to any directions that may be given by resolution of the creditors at any general meeting, and to any advice given by the consultative committee, but so that any directions so given by the creditors at any general meeting shall in case of conflict override any advice given by the consultative committee. 2. The official assignee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such time as the Court may direct or whenever requested in writing so to do by one-fourth in value of the creditors, or by the consultative committee. 3. The official assignee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy. 4. Subject to the provisions of this Ordinance, the official assignee shall use his own discretion in the administration of the property of the bankrupt.

Imp. § 89.

Appeal to Court against assignee. 79. If the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the official assignee, he may apply to the Court, and the Court may confirm or reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Imp. § 90.

Control of Court over assignee. 80. 1. The Court shall take cognizance of the conduct of official assignees, and in the event of any official assignee not faithfully performing his duties, and duly observing all the requirements imposed on him by any enactment, rules, or otherwise with respect to the performance of his duties, or in the event of any complaint being made to the Court by any creditor in regard thereto, the Court shall inquire into the matter, and take such action thereon as may be deemed expedient. 2. The Court may at any time require any official assignee to answer any inquiry made by it in relation to any bankruptcy in which he is engaged, and may examine on oath him or any other person concerning the

bankruptcy. 3. The Court may also direct a local investigation to be made of the books and vouchers of the official assignee.

Imp. § 91.

Protection of officers. 80A. 1. No suit or process shall be sued out or served on an official assignee or any person acting under his direction for anything done or intended to be done or omitted to be done under the provisions of this Ordinance until the expiry of one month after notice in writing has been served on such official assignee or person clearly stating the cause of action, and the name and place of abode of the intended plaintiff, and on the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the notice so served, and unless such notice is proved the Court shall find for the defendant. 2. Every such action shall be commenced within one year after the accruing of the cause of action, and not afterwards. 3. Any person to whom such notice of action is given as aforesaid may tender amends to the plaintiff or his solicitor at any time within one month after service of such notice, and in case the same be not accepted, may plead such tender as a defence, and in case amends have not been tendered as aforesaid, or in case the amends tendered are insufficient, the defendant may at any time before trial pay into Court as a defence such sum of money as he may think proper, and if the plaintiff be non-suited or judgment be given for the defendant then the defendant shall be entitled to full costs of the suit and have judgment accordingly.

Part V. Constitution, Procedure, and Powers of Court.

Jurisdiction.

Supreme Court to be the Court having jurisdiction in bankruptcy. 81. 1. The Supreme Court shall be the Court having jurisdiction in bankruptcy in the Colony under this Ordinance. 2. The petition shall be presented to the Court at the Settlement in which the debtor has resided or carried on business for the longest period during the six months immediately preceding the presentation of the petition. 3. Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong branch of the Court. 4. Any proceedings in bankruptcy may at any time, and at any stage thereof, either with or without the application of any of the parties thereto, be transferred by a judge of the Supreme Court from one Settlement to another Settlement, or may be retained in the Settlement in which the proceedings were commenced, although it may not be the Court in which the proceedings ought to have been commenced.

Imp. §§ 92—97.

Exercise in chambers of jurisdiction. 82. Subject to the provisions of this Ordinance, and to general rules, any judge of the Court exercising jurisdiction in bankruptcy may exercise in chambers the whole or any part of his jurisdiction.

Imp. § 98.

Jurisdiction in bankruptcy of Registrar. 83. 1. The Registrars of the Court shall have the powers and jurisdiction in this section mentioned, and any order made or act done by such Registrars in the exercise of the said powers and jurisdiction shall, subject to an appeal to the Court, be deemed the order or act of the Court. 2. Subject to general rules limiting the powers conferred by this section, a Registrar shall have power: a) To make interim orders in any case of urgency where a judge can not be found in the Settlement; b) To hear and determine any unopposed or ex parte application which is not required to be made in open Court; c) When a judge can not be found in the Settlement to summon and examine any person known or suspected to have in his possession effects of the debtor, or to be indebted to him or capable of giving information respecting the debtor, his dealings or property.

Imp. § 99.

General power of bankruptcy courts. 84. 1. Subject to the provisions of this Ordinance, the Court under its jurisdiction in bankruptcy shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. 2. Where default is made by a debtor or other person in obeying any order or direction given by the Court, or given by an official assignee or any

other officer of the Court under any power conferred by this Ordinance, the Court may on the application of the official assignee or other duly authorized person, or of its own motion, order such defaulting debtor or person to comply with the order or direction so given, and may also if it shall think fit, make an immediate order for the committal of such defaulting debtor or other person; provided that the power given by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Imp. § 102.

Appeals.

Appeals in bankruptcy. 85. 1. The Court may review, rescind, or vary any order made by it under its bankruptcy jurisdiction. 2. Orders in bankruptcy matters shall at the instance of any person aggrieved, be subject to appeal in the same way as orders of the Supreme Court in other matters are for the time being appealable. 3. For the purposes of this section, the official assignee shall be deemed to be aggrieved by the refusal of any application made by him to the Court.

Imp. § 104.

Procedure.

Discretionary powers of the Court. 86. 1. Subject to the provisions of this Ordinance, and to general rules, the costs of and incidental to any proceedings in Court under this Ordinance shall be in the discretion of the Court. 2. The Court may at any time adjourn any proceedings before it upon such terms if any as it may think fit to impose. 3. The Court may at any time amend any written process or proceeding under this Ordinance upon such terms, if any, as it may think fit to impose. 4. Where by this Ordinance or by general rules, the time for doing any act or thing is limited the Court may extend the time either before or after the expiration thereof upon such terms, if any, as the Court may think fit to impose. 5. Subject to general rules, the Court may in any matter take the whole or any part of the evidence either viva voce, or by interrogatories, or upon affidavit, or by commission abroad. 6. For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the official assignee that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

Imp. § 105.

Consolidation of petitions. 87. Where two or more bankruptcy petitions are presented against the same debtor, or against joint debtors, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

Imp. § 106.

Power to change carriage of proceedings. 88. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Ordinance in the case of the petitioning creditor, or may give the carriage of the proceedings to the official assignee, and thereafter the proceedings shall, unless the Court otherwise orders, be continued as though no change had been made in the conduct of the proceedings.

Imp. § 107.

Continuance of proceedings on death of debtor. 89. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive, and the Court may dispense with service of the petition upon him.

Imp. § 108.

Power to stay proceedings. 90. The Court may at any time for sufficient reason make an order staying the proceedings under a bankruptcy petition either altogether or for a limited time on such terms and subject to such conditions as the Court thinks just.

Imp. § 109.

Power to present petition against one partner. 91. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

Imp. § 110.

Power to dismiss petition against some respondents only. 92. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

Imp. § 111.

Property of partners to be vested in same assignee. 93. Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership, any other bankruptcy petition against or by a member of the same partnership shall be filed in or transferred to the division of the Court at the Settlement in which the first-mentioned petition is in course of prosecution, and the Court shall give such directions for consolidating the proceedings under the petitions as it thinks just.

Imp. § 112.

Actions by assignee and bankrupt's partners. 94. Where a member of a partnership is adjudged bankrupt the Court may authorize the official assignee to commence and prosecute any action or other legal proceeding in the names of the official assignee, and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action or proceeding relates shall be void; but notice of the application for authority to commence the action or proceeding shall be given to him, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action or proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect hereof as the Court directs.

Imp. § 113.

Actions on joint contracts. 95. Where a bankrupt is a contractor in respect of any contract jointly with any other person, such person may sue or be sued in respect of the contract without the joinder of the bankrupt.

Imp. § 114.

Proceedings in partnership name. 96. Any two or more persons being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Ordinance in the name of the firm; but in such case the Court may on application by any person interested order the names of the persons who are partners in such firm, or the name of such person to be disclosed in such manner and verified on oath, or otherwise, as the Court may direct.

Imp. § 115.

Actions in aid of Courts of the Federated Malay States. 96A. [Added by Ord. No. 4 of 1911, § 5.] The Supreme Court and the officers thereof shall in all matters of bankruptcy and insolvency act in aid of and be auxiliary to the Courts of the Federated Malay States having jurisdiction in bankruptcy and insolvency; and an order of any such Court of any of the said States seeking aid with a request to the Supreme Court shall be deemed sufficient to enable the Supreme Court to exercise in respect of the matters directed by the order such jurisdiction as either the Court which made the request or the Supreme Court could exercise in respect of similar matters within their several jurisdictions.

Annulment of adjudication.

Power for Court to annul adjudication in certain cases. 97. [As amended by Ord. No. 4 of 1911, § 6.] 1. Where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, or where it appears to the Court that proceedings are pending in some other part of Her Majesty's dominions or in the Federated Malay States for the distribution of the bankrupt's estate and effects among his creditors under the bankruptcy or insolvency laws of that part of Her Majesty's dominions, or of the said States, and that the distribution ought to take place in that part of Her Majesty's dominions or in the said States, the Court may annul the adjudication. 2. Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done by the official assignee, or other person acting under his authority, or by the Court shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court appoints or in default of any such appointment, revert to the debtor for all his estate or interest therein on such terms and subject to such conditions,

if any, as the Court may declare by order. 3. Notice of the order annulling an adjudication shall be forthwith gazetted and published in at least one local paper. 4. For the purposes of this section any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond in such sum, and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who can not be found, or can not be identified, shall be considered as paid in full if paid into Court.

Part VI. Small Bankruptcies.

Summary administration in small cases. 98. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official assignee reports to the Court that the property of the debtor is not likely to exceed in value three thousand dollars, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Ordinance shall be subject to the following modifications: 1. No appeal shall lie from any order of the Court, except by order of the Court. 2. The estate, where practicable, shall be distributed in a single dividend. 3. Such other modifications may be made in the provisions of this Ordinance as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Ordinance relating to the examination or discharge of the debtor.

Imp. § 121. The omission to comply with (1) is not cured by subsequent leave. — In re Wee Hum Soon, Ex parte Official Assignee, (1902), 7 S. S. L. R. 78.

Power for Court to make administration order instead of order for payment by instalments. 99. 1. [As amended by Ord. No. 26 of 1908, § 5.] Where a judgment has been obtained in the Supreme Court or in a District Court, and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding five hundred dollars, inclusive of the debt for which the judgment is obtained, the Court in which the judgment has been obtained may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to such Court under the circumstances of the case appears practicable, and subject to any conditions as to his future earnings or income which such Court may think just. 2. The order shall not be invalid by reason only that the total amount of the debt is found at any time to exceed five hundred dollars, but in such case such Court may, if it thinks fit, set aside the order. 3. When the order is made the proceedings shall be transmitted to the official assignee, who shall carry the order into effect in such manner as may be prescribed by general rules.

Imp. § 122.

Part VII. Fraudulent Debtors and Creditors.

Construction of this Part. 100. "The Court" in this Part means the Court before which an accused person is tried, and with respect to matters which it is the duty of a jury to decide or determine, includes the jury where the trial of the accused is by jury.

Punishment of fraudulent debtors. 101. 1. Any person against whom a receiving order has been made under this Ordinance shall in each of the cases following be punished with imprisonment, which may extend to two years, or with fine, or with both, that is to say: a) If he does not to the best of his knowledge and belief fully and truly discover to the official assignee all his property, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade, if any, or laid out in the ordinary expenses of his family, unless he satisfies the Court that he had no intent to defraud; b) If he does not deliver up to the official assignee, or as he directs, all such part of his property as is in his custody, or under his control, and which he is required by law to deliver up, unless he satisfies the Court that he had no intent to defraud; c) If he does not deliver up to the official assignee, or as he directs, all books, documents, papers, and writings in his custody, or under his control, relating to his property or affairs, unless he satisfies the Court that he had no intent to defraud; d) If after the presentation of a bankruptcy petition by or against him, or the service of a debtor's summons upon him, or within four

months next before such presentation or service he conceals any part of his property to the value of twenty-five dollars or upwards, or conceals any debt due to or from him, unless he satisfies the Court that he had no intent to defraud; e) If after the presentation of a bankruptcy petition by or against him, or the service of a debtor's summons upon him, or within four months next before such presentation or service he fraudulently removes any part of his property of the value of twenty-five dollars or upwards; f) If he makes any material omission in any statement relating to his affairs, unless he satisfies the Court that he had no intent to defraud; g) If knowing or believing or having reason to believe that a false debt has been proved by any person under the bankruptcy, he fails for the period of one month to inform the assignee aforesaid thereof; h) If after the presentation of a bankruptcy petition by or against him he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless he satisfies the Court that he had no intent to conceal the state of his affairs or to defeat the law; i) If after the presentation of a bankruptcy petition by or against him, or the service of a debtor's summons upon him, or within four months next before such presentation or service he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless he satisfies the Court that he had no intent to conceal the state of his affairs or to defeat the law; j) If after the presentation of a bankruptcy petition by or against him, or the service of a debtor's summons upon him, or within four months next before such presentation or service he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he satisfies the Court that he had no intent to conceal the state of his affairs or to defeat the law; k) If after the presentation of a bankruptcy petition by or against him or the service of a debtor's summons upon him, or within four months next before such presentation or service he fraudulently parts with, alters, or makes any omission in or is privy to the fraudulently parting with, altering, or making any omission in any document affecting, or relating to his property or affairs; l) If after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within four months next before the presentation thereof he attempts to account for any part of his property by fictitious losses or expenses; m) If while undischarged he obtains credit to the extent of one hundred dollars or upwards from any person without informing that person that he is an undischarged bankrupt; n) If within four months next before the presentation of a bankruptcy petition by or against him or the service of a debtor's summons upon him he by any false representation or other fraud has obtained any property on credit and has not paid for the same; o) If within four months next before the presentation of a bankruptcy petition by or against him, or the service of debtor's summons upon him, he, being a trader, obtains under the false pretence of carrying on business and dealing in the ordinary way of his trade any property on credit and has not paid for the same, unless he satisfies the Court that he had no intent to defraud; p) If within four months next before the presentation of a bankruptcy petition by or against him, or the service of a debtor's summons upon him he, being a trader, pawns, pledges, or sends out of the Colony in unusual quantities, or to unusual quarters, or disposes of otherwise than in the ordinary way of his trade, any property which he has obtained on credit, and has not paid for, unless he satisfies the Court that he had no intent to defraud; q) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy. 2. A person who has sent out of the Colony any property which he has obtained on credit, and not paid for, shall, until the contrary be proved, be deemed to have disposed of the same otherwise than in the ordinary way of his trade, if, such property not having been paid or accounted for at the date of the receiving order by the person to whom the same was sent, such last-mentioned person can not be found or does not pay or account for the same within a reasonable time after being called upon so to do by the official assignee.

Imp. 32 & 33 Vic. c. 62. § 11.

Penalty for absconding with property. 102. 1. If after the presentation of a bankruptcy petition by or against him, or the service of a debtor's summons upon him, or within four months next before such presentation or service, any person against whom a receiving order is made under this Ordinance quits the Colony,

and takes with him, or attempts or makes preparation to quit the Colony and to take with him any part of his property to the amount of fifty dollars or upwards, which ought by law to be divided amongst his creditors, he shall (unless he satisfies the Court that he had no intent to defraud) be punished with imprisonment which may extend to two years, or with fine, or with both. 2. A person who quits, or attempts or makes preparation to quit the Settlement in which he resides or carries on business shall, until the contrary be proved, be deemed to quit or attempt or make preparation to quit the Colony.

Imp. 32 & 33 Vic. c. 62, § 12.

Penalty for absconding in order to avoid service of bankruptcy process, or embarrass bankruptcy proceedings. 103. [As amended by Ord. No. 22 of 1900, § 8.]

1. If any person against whom a receiving order is made under this Ordinance quits the Colony, or before the making of such order has quitted, with intent to avoid service of any petition or other process in bankruptcy, or to avoid examination in respect of his affairs, or otherwise to defeat, embarrass, or delay any proceedings against him in bankruptcy, he shall be punished with imprisonment which may extend to one year, or with fine not exceeding five hundred dollars, or with both. 2. A person who after the presentation of a bankruptcy petition by or against him or the service of a debtor's summons upon him, or within three months next before such presentation or service, quits the Colony, shall (until the contrary be proved) be deemed to quit the Colony with such intent as in this section is mentioned.

Penalty on fraudulently obtaining credit, etc. 104. 1. Any person shall in each of the cases following be punished with imprisonment which may extend to one year, or with fine, or with both, that is to say: a) If in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud; b) If he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property; c) If he has, with intent to defraud his creditors, or any of them, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him. 2. A person who, having an unsatisfied judgment for a sum exceeding two hundred and fifty dollars entered up against him, obtains credit shall, until the contrary be proved, be deemed to have obtained such credit under false pretences or by means of fraud.

Imp. 32 & 33 Vic. c. 62, § 13.

Penalty on false claim, etc. 105. 1. If any creditor in any bankruptcy composition or arrangement with creditors makes any claim, proof, declaration, or statement of account which is untrue in any material particular, he shall, unless he satisfies the Court that he had no intent to defraud, be punished with imprisonment of either description which may extend to one year, or with fine, or with both. 2. If a creditor obtains or receives any money or property or security from any person as an inducement for forbearing to oppose, or for consenting to the discharge of a bankrupt, he shall be punished with a fine which may extend to three times the amount or value of such money, property, or security. 3. If any person knowing that a receiving order has been made against a debtor removes, conceals, receives, or otherwise deals with or disposes of any part of the property of such debtor with intent to defeat the order, shall be punished with a fine which may extend to double the amount or value of such property, or imprisonment of either description, which may extend to three years, or with both. 4. Fines imposed and levied under this section shall be deemed part of the property of the debtor, and shall vest in the official assignee.

Imp. 32 & 33 Vic. c. 62, § 14.

Debts incurred by fraud. 106. Where a debtor makes any composition or arrangement with his creditors, he shall remain liable for the unpaid balance of any debt which he incurred or increased by any fraud, or whereof before the date of the arrangement or composition he obtained forbearance by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

Imp. 32 & 33 Vic. c. 62, § 15.

Prosecution for offences. 107. Where it appears to the official assignee in the course of proceedings in bankruptcy that there is ground for believing that a debtor against whom a receiving order has been made, or any other person has been guilty of an offence under this Ordinance, or under sections 421, 422, 423 or 424 of the

Penal Code, or any amendment thereof, it shall be the duty of the official assignee to institute a prosecution against such debtor or other person, if he considers there is reasonable probability that such debtor or other person may be convicted. No prosecution for any offence under this Ordinance shall be begun by any other person except with the written consent of the official assignee, unless by order of a judge.

Imp. 32 & 33 Vic. c. 62, § 16.

Omission to keep books, debts incurred by extravagance, etc. how punished.

107A. At any time after the public examination of the debtor, a judge may, if he thinks fit, order the bankrupt to undergo imprisonment of either description for any term not exceeding three months, if it appears to him that the bankrupt: a) Having been engaged in trading or other business has not kept such books of account as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy, or within such shorter period immediately preceding that event as the Judge deems reasonable under the circumstances; or b) Having been engaged in trading or other business has not produced such books as in the preceding paragraph mentioned when called upon by the official assignee to do so; c) Has contracted any debt provable in bankruptcy without having any reasonable ground of expectation of being able to pay it; or d) Has brought on or contributed to his bankruptcy by rash speculations or extravagance in living.

Imp. § 165.

Criminal liability after discharge or composition. **108.** Where a debtor has been guilty of any offence he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge, or that a composition or scheme of arrangement has been accepted or approved.

Imp. § 167.

Form of indictment. **109.** In a charge for an offence under this Ordinance it shall be sufficient to set forth the substance of the offence charged in the words of this Ordinance specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, adjudication, or any proceedings in or order, warrant, or document of any Court acting under this Ordinance.

Imp. 32 & 33 Vic. c. 62, § 19.

Accused may give evidence. **110.** A person charged with any offence under this Ordinance, or under sections 421, 422, 423, or 424 of the Penal Code or any amendment thereof, may, if he thinks fit, tender himself to be examined on his own behalf, and thereupon may give evidence in the same manner and with the like effect and consequences as any other witness.

Part VIII. Supplemental Provisions.

Application of Ordinance.

Application to married women. **111.** A married woman shall in respect of her separate property, if any, be subject to this Ordinance in the same way as if she were unmarried.

Imp. § 152. A married woman carrying on trade separately from her husband is in respect of her separate property subject to the bankruptcy laws as if she were a feme sole. — Ord. No. 11 of 1902, § 1 (5).

Exclusion of corporations and companies. **112.** A receiving order shall not be made against any corporation or against any partnership, association, or company registered under the *Indian Companies Act, 1866*.

Imp. § 123. The *Indian Companies Act, 1866*, has been superseded by the *Companies Ordinance, 1889*.

Administration in bankruptcy of estate of person dying insolvent. **113.** [As amended by Ord. No. 22 of 1900, § 10.] 1. Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor had he been alive, may present to the Court a petition in the prescribed form, praying for an order for the administration of the estate of the deceased debtor according to the law of bankruptcy. 2. Upon the prescribed notice being given to the legal representative, if any, of the deceased debtor, the Court may in the prescribed manner upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient

for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may upon cause shown dismiss the petition with or without costs. 3. An order of administration under this section shall not be made until the expiration of two months from the date of the grant of probate or letters of administration, unless with the concurrence of the legal representative of the deceased debtor, or unless the petitioner proves to the satisfaction of the Court that the debtor committed an act of bankruptcy within three months prior to his decease. 4. A petition for administration under this section shall not be presented to the Court after proceedings have been commenced for the administration of the deceased debtor's estate; but the Court may in that case, on the application of any creditor and on proof that the estate is insufficient to pay its debts in the prescribed manner, make an order for the administration of the estate of the deceased debtor in bankruptcy, and the like consequences shall ensue as under an administration order made on the petition of a creditor. 5. Upon an order being made for the administration of a deceased debtor's estate under this section, the property of the debtor shall vest in the official assignee as trustee thereof, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Ordinance. 6. The provisions of section 26 of this Ordinance shall so far as they relate to persons other than the debtor, and with the modifications hereinafter mentioned, all the provisions of Part III of this Ordinance shall, so far as the same are applicable, apply to the case of an administration order under this section. Sections 43, 44, and 45 shall apply in the case of an administration order under this section as if the administration order were a receiving order made under section 5. 7. In the administration of the property of the deceased debtor under an order of administration, the official assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate; and those claims shall be deemed a preferential debt under the order, and be payable in full out of the debtor's estate in priority to all other debts. 8. If on the administration of a deceased debtor's estate any surplus remains in the hands of the official assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Ordinance in case of bankruptcy, the surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed. 9. Notice to the legal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after the notice no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the official assignee. Save as aforesaid, nothing in this section shall invalidate any payment made or act or thing done in good faith by the legal representative before the date of the order for administration. 10. Unless the context otherwise requires, "Court" in this section means the division of the Court for the Settlement in which the debtor resided or carried on business for the greater part of the six months immediately prior to his decease; and "creditor" means one or more creditors qualified to present a bankruptcy petition as in this Ordinance provided. 11. General rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

Imp. § 125.

General rules.

Power to make general rules. 114. 1. The judges of the Supreme Court, with the approval of the Governor in Council, may from time to time make general rules for carrying into effect the objects of this Ordinance. 2. All general rules made under the foregoing provisions of this section shall be laid before the Legislative Council within one month after they are made, and shall be judicially noticed and shall have effect as if enacted by this Ordinance. 3. After the commencement of this Ordinance no general rule under the provisions of this section shall come into operation until the expiration of one month after the same has been made and issued.

Imp. § 127.

Fees.

Fees. 115. The Governor in Council may from time to time make rules prescribing the fees and percentages to be charged for or in respect of proceedings under

this Ordinance, and may direct by whom and in what manner the same are to be collected and accounted for, and to what account they shall be paid, and a table of such fees and percentages shall be laid before the Legislative Council within one month after the making of the same.

Imp. § 128.

Evidence.

Gazette to be evidence. 116. 1. A copy of the *Gazette* containing any notice inserted therein in pursuance of this Ordinance or the rules made under this Ordinance shall be evidence of the facts stated in the notice. 2. The production of a copy of the *Gazette* containing any notice of a receiving order or of an order adjudging a debtor bankrupt shall be conclusive proof in all legal proceedings of the order having been duly made and of its date.

Imp. § 132.

Evidence of proceedings at meetings of creditors. 117. 1. A minute of proceedings at a meeting of creditors under this Ordinance signed at the same or the next ensuing meeting by a person describing himself as or appearing to be chairman of the meeting at which the minute is signed shall be received in evidence without further proof. 2. Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

Imp. § 133.

Evidence of proceedings in bankruptcy. 118. Any petition or copy of a petition in bankruptcy, any order or certificate of an order or certificate made by the Court in bankruptcy, any instrument, affidavit, or document or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceedings or other proceedings had under this Ordinance shall, if it appears to be sealed with the seal of the Court, or purports to be signed by any Judge thereof, or is certified as a true copy of any Registrar thereof be receivable in evidence in all legal proceedings whatever.

Imp. § 134.

Swearing of affidavits. 119. Subject to general rules, any affidavit may be used in a Bankruptcy Court if it is sworn: a) In the Colony before any person authorized to administer oaths in the Supreme Court or any magistrate; b) In England before any person authorized to administer oaths in Her Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorized in writing in that behalf by the judge of the Court; c) In Scotland or in Ireland before a judge ordinary, magistrate, or justice of the peace; and d) In any other place before a magistrate or justice of the peace or other person qualified to administer oaths in that place (he being certified to be a magistrate or justice of the peace, or qualified as aforesaid, by a British minister or British consul or by a notary public).

Imp. § 135.

Death of witness. 120. In case of the death of the debtor or of his wife, or of a witness whose evidence has been received by any Court in any proceeding under this Ordinance, the deposition of the person so deceased purporting to be sealed with the seal of the Court or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Imp. § 136.

Notices.

Service of notices. 121. All notices and other documents for the service of which no special mode is directed, may be sent by prepaid registered post letter to the last known address of the person to be served therewith.

Imp. § 142.

Formal defects.

Formal defect not to invalidate proceeding. 122. No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice can not be remedied by any order of that Court.

Imp. § 143.

Stamp duty.

Exemption of deeds, etc., from stamp duty. 123. 1. Every deed, conveyance, assignment, or other assurance relating solely to freehold or leasehold property, or to any mortgage, charge, or other encumbrance on or any estate, right, or interest in any real or personal property which is part of the estate of any bankrupt, and which after the execution of the deed, conveyance, assignment, or other assurance, either at law or in equity is or remains the estate of the bankrupt, or of the official assignee, and every power of attorney, proxy, paper, writ, order, certificate, affidavit, bond, or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Ordinance. 2. For the purposes of this section, "bankruptcy" includes any proceeding before or after adjudication, and whether an adjudication is made or not; and "bankrupt" includes any debtor proceeded against under this Ordinance.

Imp. § 144.

Executions.

[124—125. Are repealed by Ord. No. 34 of 1907, § 5.]

Writs of levavi facias and elegit abolished. 126. No writ of levavi facias or elegit shall hereafter be issued in any proceeding.

Imp. § 146.

Bankrupt trustee.

Application of Trustee Act to bankruptcy of trustee. 127. Where a bankrupt is a trustee within *The Indian Trustee Act, 1866*, section 35 of that Act shall have effect so as to authorize the appointment of a new trustee in substitution for the bankrupt (whether voluntarily resigning or not) if it appears expedient to do so, and all provisions of that Act and of any other statutory enactment relative thereto shall have effect accordingly.

Imp. § 147.

Corporations, firms, and lunatics.

Acting of corporations, firms, and lunatics. 128. For all or any of the purposes of this Ordinance a corporation may act by any of its officers authorized in that behalf under the seal of the corporation; a firm may act by any of its members; and a lunatic may act by his committee or curator bonis.

Imp. § 148.

Transfer of estates on vacancy of trustee in liquidation under Bankruptcy Ordinance, 1870. 129. 1. In every liquidation by arrangement under *The Bankruptcy Ordinance, 1870*, pending the commencement of this Ordinance, if at any time after the commencement of this Ordinance there is no trustee acting in the liquidation by reason of death or for any other cause, the official assignee shall become and be the trustee in the liquidation, and the property of the liquidating debtor shall pass to and vest in him accordingly, but this provision shall not prejudice the rights of the creditors in the liquidation to appoint a new trustee in manner directed by *The Bankruptcy Ordinance, 1870*, or the rules thereunder, and on such appointment the property of the liquidating debtor shall pass to and vest in the new trustee. 2. The provisions of this Ordinance with reference to the duties and responsibilities of and accounting by an assignee under this Ordinance shall apply as nearly as may be to a trustee acting under the provisions of this section.

Transfer of outstanding property on close of bankruptcy or liquidation under Bankruptcy Ordinance, 1870. 130. Where a bankruptcy or liquidation by arrangement under *The Bankruptcy Ordinance, 1870*, has been or is hereafter closed, any property of the bankrupt or liquidating debtor which is vested in the trustee, and has not been realized or distributed shall vest in the official assignee, and he shall thereupon proceed to get in, realize, and distribute the property in like manner, and with and subject to the like powers and obligations as far as applicable as if the bankruptcy or liquidation were continuing and he were acting as trustee thereunder.

Unclaimed funds or dividends.

Unclaimed or undistributed dividends or funds under this and former enactments. 131. [As amended by Ord. No. 26 of 1908, § 6.] 1. Where an assignee under any bankruptcy composition or scheme pursuant to this Ordinance has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where after making a final dividend he has in his hands or under his

control any unclaimed or undistributed money arising from the property of the debtor, the assignee shall forthwith pay it into the Court for credit to the Bankruptcy Estates Account. 2. a) Where after the passing of this Ordinance any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered to collect, receive, or distribute any funds or dividends under *The Bankruptcy Ordinance, 1870* have remained or remain unclaimed or undistributed for six months after the same became claimable or distributable or in any other case for two years after the receipt thereof by such trustee or other person, it shall be the duty of such trustee or other person forthwith to pay the same into the Court for credit to the Bankruptcy Estates Account; b) The Court may at any time order such trustee or other person to submit to it an account verified by affidavit of the sums received and paid by him and may direct and enforce an audit of the account; c) The official assignee shall collect and get in all such unclaimed or undistributed funds or dividends, and for the purposes of this section the Court shall have and at the instance of the official assignee or of its own motion may exercise all the powers conferred by this Ordinance with respect to the discovery and realization of the property of a debtor, and the provisions of Part I of this Ordinance with respect thereto shall with any necessary modifications apply to proceedings under this section. 3. The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against the assignee. 4. All unclaimed dividends and all moneys remaining unclaimed or undistributed after a final dividend has been declared shall stand at the credit of the Bankruptcy Estates Account for five years, and, if they remain unclaimed at the expiration of that period, shall by entries effected in the books of the Accountant-General and the official assignee, be transferred and paid into an account to be kept by the Accountant-General, and shall be disposed of in such manner and for such purposes as the Governor in Council may from time to time direct: Provided that if any claim shall hereafter be made to any part of the moneys so transferred, and if any such claim shall be established to the satisfaction of the official assignee, the Accountant-General shall pay to the claimant, without interest, such sum as may be certified by the official assignee to be due to him. 5. So soon after the passing of this Ordinance as conveniently may be, and thereafter in the month of January in each year, the Accountant-General shall send to the Colonial Secretary a report in writing of all sums which at the several Settlements are transferred under the provisions of this section.

Imp. § 162.

Debtor's books.

Access to debtor's books. 132. 1. No person shall as against the official assignee be entitled to withhold possession of the books of account or other papers or documents belonging to the debtor, or to set up any lien thereon. 2. Any creditor of the bankrupt may, subject to the control of the Court, inspect at all reasonable times personally or by agent any such books, papers, or documents in the possession of the official assignee.

The First Schedule.

Enactments repealed.

| Number of Ordinance. | Short title. | Extent of repeal. |
|----------------------|---------------------------------|-------------------|
| 21 of 1870. | The Bankruptcy Ordinance, 1870. | The whole. |

The Second Schedule.

Meeting of creditors.

1. [As amended by Ord. No. 22 of 1900, § 11.] The first meeting of creditors shall be summoned for a day not later than one calendar month in the case of a debtor's petition, or six weeks in the case of a creditor's petition after the date of the receiving order, unless the Court for any special reason deems it expedient that the meeting be summoned for a later day.

2. The official assignee shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the prescribed manner.

3. The official assignee shall also as soon as practicable send to each creditor mentioned in the debtor's statement of affairs a notice of the time and place of the meeting, accompanied by a summary of the debtor's statement of affairs, including the causes of his failure and any observations thereon which the official assignee may think fit to make; but the proceedings at the meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the official assignee most convenient for the majority of the creditors.

5. The official assignee may at any time summon a meeting of creditors and shall do so whenever so directed by the Court or so requested in writing by one-fourth in value of the creditors or by the consultative committee.

6. Meetings subsequent to the first meeting shall be summoned by sending not less than three days' notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.

7. The official assignee, or in his absence some person nominated by him, shall be chairman at every meeting: Provided that if the Court so directs the chairman at any subsequent meeting shall be such person as the meeting by ordinary resolution appoints.

8. A person shall not be entitled to vote as a creditor at any meeting of creditors, unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained.

10. For the purposes of voting a second creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

12. It shall be competent to the official assignee within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided that where a creditor has put a value on the security he may at any time before he has been required to give up the security as aforesaid correct the valuation by a new proof, and deduct the new value from his debt, but in that case the addition of twenty per centum shall not be made if the official assignee requires the security to be given up.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form and shall be issued by the official assignee, and every insertion therein shall be in the handwriting of the person giving the proxy, or if such person be unable to write English, then in the handwriting of the official assignee.

17. A creditor may give a general proxy to his manager or clerk or any other person in his regular employment. In that case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

18. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof for or against any specific resolution.

19. A proxy shall not be used unless it is deposited with the official assignee before the meeting at which it is to be used.

20. A creditor may appoint the official assignee to act in manner prescribed as his general or special proxy.

21. The chairman of a meeting may with the consent of the meeting adjourn the meeting from time to time and from place to place.

22. A meeting shall not be competent to act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting, unless there are present or represented thereat at least three creditors, or all the creditors if their number does not exceed three.

23. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

24. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him.

25. No person acting under either a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor.

The Third Schedule.

Proof of debts.

(The provisions of this Schedule are substantially identical with those of 46 & 47 Vic., c. 52, Sched. II., §§ 1—26, except that the rate of interest on debts whereon the interest is not reserved or provided for is 6% instead of 4%, and that the rate of interest in the case of a debt payable at a future time is 6% instead of 5%.)

The following sections relating to the taking of accounts of property mortgaged and the sale thereof are added in the Ordinance:

18. Upon application by motion of any person claiming to be a mortgagee of any part of the bankrupt's immoveable property, whether the mortgage is of a legal or equitable nature, the Court shall proceed to inquire whether the person is such mortgagee, and for what consideration and under what circumstances; and if it is found that the person is such mortgagee, and if no sufficient objection appears to the title of the person to the sum claimed by him under the mortgage, the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest, and costs due upon the mortgage, and the rents and profits or dividends, interest, or other proceeds received by the person or by any other person by his order, or for his use in case he has been in possession of the property over which the mortgage extends, or any part thereof; and the Court, if satisfied that there ought to be a sale, shall direct notice to be given in such manner as it thinks fit when and where and by whom and in what way the property or the interest therein so mortgaged is to be sold, and that the sale be made accordingly, and that the official assignee (unless it be otherwise ordered) shall have the conduct of the sale; but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

19. All proper parties shall join in the conveyance to the purchaser as the Court may direct.

20. The moneys arising from the sale shall be applied in the first place in payment of the costs, charges, and expenses of the official assignee of and occasioned by the application to the Court, and of and attending the sale, and then in payment and satisfaction so far as the same will extend, of what is found due to the mortgagee for principal, interest, and costs; and the surplus of the said moneys, if any, shall then be paid to the official assignee. But in case the moneys arising from the sale are insufficient to pay and satisfy what is so found due to the mortgagee, then he shall be entitled to prove as a creditor for the deficiency and receive dividends thereon rateably with the other creditors, but not so as to disturb any dividend then already declared.

21. For the better taking of such inquiries and accounts, and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as it may think fit, and shall produce before the Court upon oath all deeds, papers, books, and writings in their respective custody or power relating to the estate or effects of the bankrupt, as the Court may direct.

b) No. 22 of 1900. An Ordinance to further amend The Bankruptcy Ordinance, 1888 (13th November, 1900).

Short title: reprints. 1. This Ordinance may be cited as *The Bankruptcy Ordinance, 1888, Amendment Ordinance, 1900*, and shall be read and construed as one with *The Bankruptcy Ordinance, 1888*, hereinafter called the principal Ordinance. Any copy of the principal Ordinance printed after the commencement of this Ordinance may be printed with the amendments, additions, and alterations required by this Ordinance.

[2—11. Amend Ord. No. 2 of 1888, §§ 16, 23, 24, 28, 38, 44, 103, 107, 113, Sched. II; and are there incorporated.]

c) No. 34 of 1907. An Ordinance to amend The Bankruptcy Ordinance, 1888 (20th December, 1907).

Short title. 1. This Ordinance may be cited as *The Bankruptcy Ordinance 1888 Amendment Ordinance, 1907*, and shall come into operation on the first day of April, 1908. It shall be read and construed as one with *The Bankruptcy Ordinance, 1888*, (hereinafter called the principal Ordinance). Any copy of the principal Ordinance printed after the commencement of this Ordinance may be printed with the amendments and additions made by this Ordinance.

[2—4. Amend Ord. No. 2 of 1888, §§ 2, 4, and 44 and are there incorporated.]

[5. Repeals Ord. No. 2 of 1888, §§ 124, 125.]

d) No. 26 of 1908. An Ordinance to amend The Bankruptcy Ordinance, 1888 (2d December, 1908).

Short title. 1. This Ordinance may be cited as *The Bankruptcy Ordinance, 1888, Amendment Ordinance, 1908*. It shall be read and construed as one with *The Bankruptcy Ordinance, 1888*, (hereinafter called the principal Ordinance). Any copy of the principal Ordinance printed after the commencement of this Ordinance may be printed with the amendments required by this Ordinance.

[2—6. Amend Ordinance No. 2 of 1888, §§ 4, 6, 99, and 131, and are there incorporated.]

e) No. 9 of 1910. An Ordinance to amend The Bankruptcy Ordinance, 1888 (28th April, 1910).

Short title. 1. This Ordinance may be cited as *The Bankruptcy Ordinance, 1888, Amendment Ordinance, 1910*, and shall be read and construed as one with the *Bankruptcy Ordinance, 1888*, (hereinafter called the principal Ordinance). Any copy of the principal Ordinance printed after the commencement of this Ordinance may be printed with the amendments made by this Ordinance.

[2. Amends Ord. No. 2 of 1888, § 2, and is there incorporated.]

[3. Amends Ord. No. 2 of 1888, § 51, and is there incorporated.]

f) No. 4 of 1911. An Ordinance to amend The Bankruptcy Ordinance, 1888 (2d April, 1911).

Short title. Reprints. 1. This Ordinance may be cited as *The Bankruptcy Ordinance, 1888, Amendment Ordinance, 1911*, and shall be read and construed as one with the *Bankruptcy Ordinance, 1888*, (hereinafter called the principal Ordinance). Any copy of the principal Ordinance printed after the commencement of this Ordinance may be printed with the amendments made by this Ordinance.

[2—6. Amend Ord. No. 2 of 1888, and are there incorporated.]

Federated Malay States.

Introduction.¹⁾

The Federated Malay States comprise the States of Perak, Selangor, Negri Sembilan, and Pahang.

History and government.²⁾

The relations between the Straits Settlements and the Native States of the Malay Peninsula date back to the commercial treaty between Penang and Perak in 1818. Beginning with 1874 closer political and commercial relations were established, and British Residents were stationed in Perak, Selangor, and Sungei Ujong. In 1887 the Rajah of Pahang agreed to place the foreign relations of that State in charge of Great Britain, and in 1888 Pahang was placed in the same position to the British Government as the other States. The British Residents of the four States are assisted by a staff of European officers, whose duty it is to carry out the executive functions. The supreme authority in each state is vested in the State Council, consisting of the high native chiefs, and presided over by the Native Ruler, assisted by the British representative. The British Residents are appointed by the Crown, and are subordinate to the Resident-General³⁾ and to the High Commissioner for the Federated Malay States, who is also the Governor of the Straits Settlements.

In 1895 a Treaty of Federation was signed by the rulers of the four States creating a federation to be known as the Federated Malay States, to be administered under the advice of the British Government. The system of British Residents in the several States remained in force, but these Residents were subjected to the control of a Resident-General. Provision was made for the holding of meetings of the rulers of the several States, and several meetings were held.

In 1909 an Agreement (20th October, 1909) was entered into between the High Commissioner of the Federated Malay States and the rulers of the four States, under which the States desire to provide "for the joint arrangement of all matters of common interest to the Federation, or affecting more than one State, and for the proper enactment of all laws intended to have force throughout the Federation or in more than one State."⁴⁾ A Federal Council was created consisting of the High Commissioner, the Chief Secretary to Government, the rulers and residents of the four States, and four unofficial members to be nominated by the High Commissioner with the approval of the Crown⁵⁾. Additional official members may be designated by the High Commissioner with the approval of the Crown, and additional unofficial members appointed⁶⁾. The High Commissioner is president of the Council⁷⁾. The Federal Council is required to meet at least once in every year⁸⁾. The first meeting was held in 1909, and a number of enactments were passed.

The laws in force within the several States, and laws enacted after the formation of the Federal Council are unaffected, except in so far as they may be repugnant to the provisions of any law passed by the Federal Council. Questions connected with the Mohammedan religion, mosques, political pensions, native chiefs, and penghulus, and any other questions which in the opinion of the High Commissioner affect the rights and prerogatives of the rulers of any of the States, or which for other reasons

¹⁾ The author desires to express his indebtedness to Sir W. T. Taylor, K. C. M. G., Chief Secretary, Federated Malay States, E. C. H. Wolff, Esq., of the Federal Secretariat of the Federated Malay States, Robert C. Grey, Esq., Secretary to the Resident Selangor, Arthur Henry Lemon, Esq., Acting Legal Adviser to the Federated Malay States, and B. W. Elles, Esq., Acting secretary to the Resident Negri Sembilan, for valuable information regarding the law of the Federated Malay States. — ²⁾ Based on the *Colonial Office List, 1910*, pp. 357, et seq. — ³⁾ The Resident-General is a corporation sole, with power to hold lands, etc., in the Straits Settlements. — S. S. Ord. No. 1 of 1898. In January, 1911, the title of this office was changed to Chief Secretary to Government. — ⁴⁾ Agreement, 20th October, 1909, Preamble. — ⁵⁾ Ibid. § 2. — ⁶⁾ Ibid. § 3. — ⁷⁾ Ibid. § 5. — ⁸⁾ Ibid. § 7.

he considers should properly be dealt with only by the State Councils are reserved to the State Councils¹⁾. The draft estimates of revenue and expenditure of each State are considered by the Federal Council, but immediately on publication are communicated to the State Councils²⁾.

Law in force.³⁾

The law in force in the States at the time of the first appointment of British Residents was the Mohammedan law, modified in some respects by local custom, and such law is still administered in the Courts of Kathis and Assistant Kathis, who are empowered by law to try cases concerning the Mohammedan religion, marriage, and divorce, and all other matters regulated by Mohammedan law, which may be defined in their kuasa (letter of appointment), and in the Courts of the local headmen or Penghulus.

Persons professing the Mohammedan religion are punishable for certain defined offences against Mohammedan law by a Court of a Magistrate of the First Class or a Court of a Judicial Commissioner, with the aid of assessors taken from a list of Mohammedans of standing nominated in that behalf by the Ruler of the State.

In all other matters, civil and criminal, the law administered is contained in local Enactments, which are for the most part based on the laws of British India. The Law of Evidence and the Penal Code of the Straits Settlements are in force in the States, each of which has also a Code of Civil Procedure and Criminal Procedure, based on Indian models.

Each of the States has local Enactments dealing with the topics of contracts, companies, and negotiable instruments. These are dealt with more fully below. In the Civil Procedure Code there are chapters dealing with insolvency (reprinted below), the appointment of receivers, references to arbitration, suits by and against companies trustees, executors, minors, and lunatics. There are local Enactments on bills of sale, powers of attorney, patents, and other matters. There is at present no bankruptcy department, and no registration of trade marks, but measures to establish these are in contemplation. Stamp duties are regulated by local Enactments, similar to the Straits Settlements Ordinances (No. 2 1881 and No. 10 of 1885), but a committee has recently been appointed to assimilate the stamp laws of the States and of the Colony.

In matters not provided for by Enactment, and in the interpretation of the existing Enactments, the Courts are guided mainly by decisions of the English, Indian, and Straits Settlements Courts, in so far as applicable. But the English common law is not, as in the Straits Settlements, admitted as governing matters not specially provided for by legislation.

As regards commercial matters natives and non-natives are governed by the same law⁴⁾.

Merchandise marks are regulated by an Enactment of the Federal Council⁵⁾. The licensing and control of auctioneers is governed by State Enactments⁶⁾ as is also the registration of bills of sale⁷⁾.

Courts and procedure.

The judicial system in the States of Perak, Selangor, Negri Sembilan and Pahang is organized on identical lines⁸⁾, and comprises the following Courts: the

1) Agreement, 20th October, 1909, Preamble, § 9. — 2) Ibid. § 10. — 3) Kindly revised by the Legal Adviser to the Government of the Federated Malay States. — 4) See also an article on *Native States Law*, in *Straits Law Journal*, (N. S.) Vol. 5, pp. 12, 30. There are several compilations of local Malay law. A ms. copy of the work of Abdullah bin Abdulkadir is in the Library of Congress in Washington. These compilations are of little practical value. — 5) E. No. 1 of 1910, reprinted in part, *infra*. — 6) Perak, O. in C. No. 12 of 1891; Selangor, E. No. 20 of 1897, as amended by E. No. 2 of 1905; Negri Sembilan, E. No. 19 of 1897, as amended by E. No. 11 of 1905; Pahang, E. No. 17 of 1897, as amended by E. No. 17 of 1905. — 7) Perak, E. No. 12 of 1900, as amended by E. No. 3 of 1901; Selangor, E. No. 16 of 1900, as amended by E. No. 4 of 1901; Negri Sembilan, E. No. 14 of 1900, as amended by E. No. 4 of 1901; Pahang, E. No. 4 of 1901, as amended by E. No. 13 of 1901. — 8) Perak, E. No. 13 of 1905, as amended by E. No. 1 of 1908, and E. No. 21 of 1909; Selangor, E. No. 15 of 1905, as amended by E. No. 1 of 1908, and E. No. 21 of 1909; Negri Sembilan, E. No. 15 of 1905, as amended by E. No. 8 of 1907, E. No. 1 of 1908, and E. No. 22 of 1909; Pahang, E. No. 13 of 1905, as amended by E. No. 3 of 1908, and E. No. 27 of 1909. The numbering of the sections is identical.

Supreme Court, comprising the Court of a Judicial Commissioner and the Court of Appeal, the Court of a Magistrate of the First Class, the Court of a Magistrate of the Second Class, the Court of a Kathi and the Court of an Assistant Kathi, and the Court of a Penghulu. The Court of Appeal and the Court of a Judicial Commissioner are Courts of record¹).

The Court of Appeal consists of two or more Judicial Commissioners, with the Chief Judicial Commissioner as President of the Court²). The Court of Appeal has jurisdiction to hear and determine appeals from any judgment or order of a Judicial Commissioner's Court in any civil matter, whether made in the exercise of its original or its appellate jurisdiction³). No appeal lies to the Court of Appeal in any of the following cases: a) Where the amount or the value of the subject matter of the suit is less than \$ 500, except with the leave of the Court of Appeal on the ground of errors in law or equity, or wrongful admission or rejection of evidence; b) Where the judgment or order is made by the consent of the parties; c) Where the judgment or order relates to costs only; d) Where, by any Enactment for the time being in force, the judgment or order of the lower Court is expressly declared to be final⁴).

The Judicial Commissioners' Courts consist of a Judicial Commissioner⁵), and exercise original and appellate jurisdiction in civil and criminal matters⁶). These Courts exercise civil jurisdiction in all suits, matters, and questions of a civil nature, except jurisdiction in divorce or for annulments of a marriage lawfully solemnized between Christians in Great Britain, or in any British colony, protectorate, or possession. In amplification and not in derogation of the generality of the foregoing powers the said Court may try all suits by and against all persons and bodies corporate, in all cases where the persons who are defendants are present in the State, or the corporate body which is defendant has an establishment or place of business in the State; and also in the following cases although the defendant is not present, or has not its establishment as aforesaid in the State: if the defendant has property in the State, or if the whole or any part of the subject matter of the suit is land or stock or other property situate within the State; or where any act, deed, will, or thing affecting such land, stock, or property was done, executed, or made within the State; and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such suit, or for the breach whereof damages or other relief are or is demanded in such suit, was made or entered into, or was to be performed, or partly performed, within the State; and whenever there has been a breach within the State of any contract wherever made; and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done, or is situate, within the State, or if the cause of action arose in the State, or if the subject of the proceeding otherwise falls, on general principles of international law or comity, to be determined by the law of the State. In suits founded on contract "cause of action" does not necessarily mean the whole cause of action; but a cause of action is deemed to have arisen within the jurisdiction, if the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction, though the contract may have been made elsewhere. The said Court also has power to appoint guardians and committees of infants and lunatics, to grant letters of probate and administration, and to try all suits relating to wrecks, collisions, the capture of prizes, claims for salvage, towage, breaches of contract, and all other maritime matters arising within the waters of the State, or in respect of which the defendant or defendants or any of them resides or has a place of business within the State⁷). No appeal lies from the decision of a Magistrate's Court to the Court of a Judicial Commissioner in any civil suit the amount or the value of the subject matter whereof does not exceed \$ 100, but the Court of a Judicial Commissioner, either of its own motion or on the application of any party aggrieved on the ground that such decision is wrong in law, may call for the record of the suit, and may pass such order thereon, either by directing a new trial or otherwise, as may seem to be necessary to secure substantial justice being done⁸).

The Courts of Magistrates of the First Class consist of a Magistrate of the First Class, and have civil jurisdiction in all suits where the subject matter in dispute does

¹) Enactments of 1905, § 4. — ²) Ibid. § 10. — ³) Ibid. § 16. — ⁴) Ibid. § 30. — ⁵) Ibid. § 44. — ⁶) Ibid. § 45. — ⁷) Ibid. § 46. — ⁸) Courts Enactment, 1908, § 2.

not exceed in value \$ 500, except suits involving any right or interest in immoveable property. But when the term and interest of a tenant of any immoveable property has expired or has been duly determined by a legal notice to quit, or when a right of re-entry has accrued for the non-payment of rent, or for the non-performance or mis-performance or breach of any covenant, condition, or agreement by the tenant: and the tenant, or any person holding or claiming by, through or under him, neglects or refuses, in any of the above cases, to deliver up possession of the premises; then the Court has jurisdiction to hear and determine any action brought by the landlord either against the tenant or the person so neglecting or refusing, for the recovery of the premises, and thereupon to issue an order to the bailiff to put the landlord in possession; and, in any such action, there may be added a claim for rent or mesne profits and for damages arising to the plaintiff from the defendant holding over or resisting his right of possession or re-entry, and for damages for the breach of any covenant, condition, or agreement in relation to the premises: provided always that such jurisdiction shall not be exercised when the money claim shall exceed the sum of \$ 600, or the rent payable for the premises shall exceed the sum of \$ 50 per month or \$ 600 per annum: provided also that such jurisdiction shall not be exercised in any case in which there is a bona fide question of title involved. These Courts also have appellate jurisdiction from any decision of a Court of a Penghulu sitting within the local jurisdiction of the Court¹⁾.

The Courts of Magistrates of the Second Class consist of a Magistrate of the Second Class, and have civil jurisdiction to hear and determine all suits within their local jurisdiction when the value in dispute does not exceed \$ 250²⁾, but have no jurisdiction in suits involving any right or interest in immoveable property.

The Courts of Kathis and Assistant Kathis have such powers in matters concerning the Mohammedan religion, marriage and divorce, and in all other matters regulated by Mohammedan law, as may be defined in their kuasa³⁾.

The Courts of a Penghulu have jurisdiction in all suits brought by or against Malays or other Asiatics, in which the value does not exceed \$ 25⁴⁾.

Where a final judgment or order of the Court of Appeal made in a civil action involves the amount or value of £500 or upwards, any party aggrieved thereby may, within the prescribed time, or, if no time is prescribed, within fifteen days after the same is given or made, apply by motion to the Court of Appeal for leave to appeal to the Privy Council. The applicant must give security to the satisfaction of the Court to an amount not exceeding £500 for the prosecution of the appeal, and for such costs in the event of the dismissal of the appeal for want of prosecution as the Court of Appeal may award, and for payment of all such costs as may be awarded to any respondent. Such security must be furnished within two months⁵⁾. Where leave to appeal to His Majesty in Council is applied for by a person ordered to pay money or do any other act, the Court of Appeal may direct either that the order appealed from be carried into execution, or that the execution thereof be suspended pending the appeal, as the Court thinks just, the respondent or appellant furnishing security⁶⁾.

Procedure is regulated by the Codes of Civil Procedure⁷⁾. The limitation of suits is governed by enactments following closely the Indian Limitation Acts⁸⁾.

1) Ibid. § 54. — 2) Ibid. § 56. — 3) Courts Enactment, 1905, § 61. — 4) Ibid. §§ 62, 63. — 5) Federated Malay States Appeals Order in Council, 11th May, 1906, § 3. — 6) Ibid. § 4. — 7) Perak, E. No. 11 of 1902; Selangor, E. No. 13 of 1902; Negri Sembilan, E. No. 7 of 1902; Pahang, E. No. 11 of 1902. These Codes were slightly amended in 1905 and 1906. — 8) Perak, E. No. 6 of 1896; Selangor, E. No. 5 of 1896; Negri Sembilan, E. No. 9 of 1896, as amended by E. No. 6 of 1897; Pahang, E. 20 of 1902.

Bibliography.

Collections of Enactments.

I. Federation.

Enactments passed in Federal Council. Annual. Kuala Lumpur.

II. States.

1. Perak.

Treacher, W. H.: Perak orders in council. Taiping. 1892.

Birch, F. W., and **Belfield**, H. C.: Orders in council, 1877—1895. Taiping. 1896.

Laws, orders in council, and enactments. 1877—1896. Taiping. 1899.

Maxwell, William George: Laws of Perak. 1877—1904. Kuala Lumpur. 1905.

Enactments passed in council. Annual. Kuala Lumpur¹).

2. Selangor.

Voules, A. B.: Laws of Selangor. 1877—1899. Kuala Lumpur. 1901.

Enactments passed in council. Annual. Kuala Lumpur¹).

3. Negri Sembilan.

Orders and regulations. Sungei Ujong, 1883—1895, Negri Sembilan (Old), 1889—1895; and Negri Sembilan, 1895. Kuala Lumpur. 1896.

Dyson, C. V., and **Dinsmore**, W. H.: Laws of Negri Sembilan. 1883—1904. Singapore. 1904.

Enactments passed in council. Annual. Kuala Lumpur¹).

4. Pahang.

Laws, passed by the state council, 1889—1896. Kuala Lumpur. 1897.

Enactments passed in council. Annual. Kuala Lumpur¹).

Reports of Cases.

| Name of report. | No. of vols. | Period. | Method of citation. |
|--|--------------|-----------|---------------------|
| Federated Malay States Reports | 2 | 1897—1905 | F. M. S. |

Works on Law.

Wilkinson, R. J.: Papers on Malay Law. Kuala Lumpur. 1908.

Statutes.²⁾

I. Enactments of the Federation.

Companies.

No. 17 of 1910. An Enactment to provide for the Registration of Particulars regarding Companies incorporated outside the Federated Malay States and for the Holding of Land by such Companies (3d November 1910).³⁾

Short title and commencement. 1. This Enactment may be cited as *The British and Foreign Companies Enactment, 1910*, and shall come into operation on the 1st day of January, 1911.

¹⁾ Since 1910 the State Enactments are included in the volume of Enactments passed in the Federal Council. — ²⁾ As in force 1st January, 1912. — ³⁾ In exercise of the powers

Particulars to be registered regarding companies established outside the F. M. S.

2. 1. Every company incorporated outside the Federated Malay States, which has prior to the commencement of this Enactment established a place of business or

conferred upon him by section 10 of *The British and Foreign Companies Enactment, 1910*, the Resident-General has made the following rules:

1. These rules may be cited as *The British and Foreign Companies Rules, 1910*.

2. In these rules the expression "the Enactment" means *The British and Foreign Companies Enactment, 1910*, and any words defined in that Enactment shall, unless the context otherwise require, have in these rules the meanings assigned to them in that Enactment.

3. Wherever in these rules the "name" of any individual is required to be stated the word "name" means the full name and, if the person is a Mohammedan or a Hindu or other Asiatic who does not use a surname, both the personal name and the father's name.

4. There shall be kept in the office of the Registrar of Companies for the purposes of the Enactment a book in which shall be entered the nature of every document received for filing, and the date on which it was so received. No document shall be deemed to have been received for filing until the prescribed fee has been paid.

5. Every company, particulars of which have been filed under the Enactment, shall be given an index number, which shall be marked upon every document relating to such company and all such documents shall be kept together in order of filing.

6. Every instrument or copy of an instrument requiring to be certified under section 2 (1) (a) of the Enactment shall be certified in one or other of the following ways: a) by the seal of the company authenticated in the manner laid down under the articles of the company; b) by a certificate that it is a true copy of the original instrument under the hand of the Registrar, Deputy Registrar, or Assistant Registrar of Companies or a Notary Public of the country in which the company is incorporated; c) by a certificate that it is a true copy of the original instrument signed by a Director or Secretary of the Company accompanied by a declaration made in the form following before a Magistrate in and for one of the Federated Malay States by some responsible person connected (otherwise than as a clerk) with the business of the company and resident in the Federated Malay States.

Form of declaration.

I (A. B.), of, do solemnly and sincerely declare that I am acquainted with the signature of C. D., the Secretary (or a Director) of the Company, and that the signature at the foot of the certificate written upon the copy of the instrument hereunto attached is, to the best of my knowledge and belief, the true and authentic signature of the said C. D. and that the said C. D. was at the time of signing the Secretary (or a Director) of the said company, and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the "Statutory Declarations Enactment, 1899".

Subscribed and solemnly declared. by the above named at in the State of, this day of 19.

Before me

Magistrate.

7. If the instrument or copy of instrument is not in the English language, it must be accompanied by a translation of it into English attached thereto and certified to be, to his own personal knowledge or to the best of his belief, a true translation either by: a consular officer of the country in which the company is incorporated; a British consular officer resident in the country in which the company is incorporated; or (in the case of documents in an Asiatic language); a Judge or Magistrate of a country in which the language in which the instrument is written is in common use. The signature of such consular officer, Judge or Magistrate must be attested by his seal of office.

8. The office of the Registrar of Companies shall be open for the inspection of documents filed in accordance with the Enactment, every day, except Sundays and holidays, between the hours of 10 a. m. and 12 noon and also on every such day (except Saturdays) between the hours of 2 p. m. and 4 p. m.

9. No person shall be permitted to inspect any document except between the hours mentioned or until he has paid the fee prescribed in these rules, and no document may under any circumstances be removed from the office.

10. No document may be inspected except in the presence of the Registrar or a clerk deputied by him, and no person inspecting a document shall be permitted to make any mark thereon.

11. Copies or extracts may be made without extra charge but only with ordinary lead pencil and not with any ink or other writing fluid.

12. The fee for inspection shall be 25 cents for each document inspected. No inspection shall exceed half an hour unless a fresh fee has been paid at the end of the first half hour.

13. The Registrar shall, if required, supply certified copies or extracts from documents filed with him under the Enactment upon payment of the following fees:

For each certified copy of, or extract from, an instrument \$ 10

For each certified copy of, or extract from, any other document \$ 1

14. Uncertified copies or extracts may be supplied on payment of the cost of copying at the rate of 10 cents for every folio of 100 words.

carried on business within the Federated Malay States, shall within four months from the date of such commencement, and every company incorporated outside the Federated Malay States which shall after the commencement of this Enactment establish a place of business or commence to carry on business in the Federated Malay States shall within three months after such place of business has been established, or after commencing to carry on such business, file with the Registrar of Companies at Kuala Lumpur: a) A certified copy of the charter, statutes or memorandum, and articles of association of the company or other instrument constituting or defining the constitution of the company, and if the instrument is not written in the English language, a certified translation thereof; b) A list of the directors of the company; c) The names and addresses of some one or more persons resident in the Federated Malay States authorised to accept on behalf of the company service of process and any notices required to be served on the company; and the in event of any alteration being made in such instrument or in the names or addresses of any such persons as aforesaid, the company shall within six weeks thereof file a notice of the alteration. 2. Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by registered post to the address which has been so filed. 3. In this section: The expression "certified" means certified in such manner as the Resident-General may from time to time by rule prescribe to be a true copy or a correct translation, as the case may be; The expression "place of business" includes a share, transfer or share registration office; The expression "director" includes any person occupying the position of director by whatever name called.

Annual statement to be filed by other than private companies. 3. 1. Every company to which this Enactment applies, other than a private company, shall within fifteen months of the commencement of this Enactment, and thereafter at least once in each calendar year, file with the Registrar of Companies at Kuala Lumpur a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the company's auditors, and containing a summary of its share capital, its liabilities, and its assets, with such particulars as shall disclose the general nature of such liabilities and assets and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss. 2. In this section the expression "private company" means a company which by its articles: a) Restricts the right to transfer its shares; and b) Limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and c) Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

Provisions as regards limited companies. 4. Every company to which this Enactment applies, and which uses the word "Limited" or any word with the like meaning as part of its name, shall: a) In every prospectus, notice, circular, advertisement, or other invitation offering to the public in the Federated Malay States for subscription or purchase any shares or debentures of the company state the country in which the company is incorporated; b) Conspicuously exhibit on every place where it carries on business in the Federated Malay States the name of the company and the country in which the company is incorporated; c) Have the name of the company and the country in which the company is incorporated mentioned in legible characters in all bill-heads and letter paper and in all notices, advertisement, and other official publications of the company.

Power to hold land, etc. 5. Any company incorporated in the United Kingdom of Great Britain and Ireland or in any British Possession or elsewhere shall, if it has filed with the Registrar of Companies at Kuala Lumpur the documents and particulars specified in paragraphs a), b), and c) of section 2 of this Enactment, have the same power to exercise all the functions of an incorporated company and to hold lands in the Federated Malay States as if it were a company registered under the *Companies Enactment, 1897*, of any of the States of Perak, Selangor, Negri Sembilan and Pahang, or under all of these Enactments.

Penalty. 6. If any company to which this Enactment applies fails to comply with any of the requirements of sections 2, 3, or 4 of this Enactment, the company and every officer or agent of the company shall be liable to a fine not exceeding five hundred dollars, or in the case of a continuing offence, fifty dollars for every day during which the default continues.

Duty of Registrar of Companies. 7. It shall be the duty of the Registrar to enforce the provisions of this Enactment and to report to the Public Prosecutor in all cases where the same are contravened.

Certificate of Registrar of Companies. 8. 1. In all prosecutions under this Enactment a certificate given by the Registrar under his hand that any document has not been filed with him or that any document filed with him was so filed on a certain date shall be conclusive evidence of the facts stated in such certificate. 2. Any copy of, or extract from, any of the documents kept and registered in the office of the Registrar of Companies under this Enactment shall, if duly certified under the hand of the Registrar to be a true copy, be received in evidence in all legal proceedings, civil or criminal, and in all cases whatsoever as if it were the original document.

Fees. 9. There shall be paid to the Registrar of Companies for registering any document required by this Enactment to be filed with him a fee of five dollars.

Power to make rules. 10. The Resident-General may from time to time make rules: a) To prescribe the fees to be charged for the preparation and certification of copies of, or extracts from, any documents filed under the provisions of this Enactment; b) To prescribe the hours at which and the conditions under which documents filed under the provisions of this Enactment shall be open to inspection by the public and the fees to be charged for such inspection; c) To prescribe the manner in which the copies and translations of instruments to be filed under section 2 of this Enactment shall be certified; d) Generally to provide for the due carrying into effect of the provisions of this Enactment.

Sale of Goods.¹⁾

No. 1. of 1910. An Enactment to amend the Law relating to fraudulent Marks on Merchandise (2d May, 1910).

Implied warranty on sale of marked goods. 14. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Enactment, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to, and accepted by the vendee.

Provisions of Enactment as to false description not to apply in certain cases. 15. Where, on the commencement of this Enactment, a trade description is lawfully and generally applied to goods of a peculiar class or manufactured by a particular method to indicate the particular class or method of manufacture of such goods, the provisions of this Enactment with respect to false trade descriptions shall not apply to such trade description when so applied. Provided that, where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

¹⁾ The Enactment of which the sections relating to implied warranties are herein reprinted is substantially identical with the *Imperial Merchandise Marks Act, 1887*, (50 & 51 Vic. c. 28). These provisions are supplemental to those contained in the Contract Enactments of the several States, and noted below.

II. State Enactments.

I. Perak.

Contracts.

No. 22 of 1899. An Enactment to define and amend certain Parts of the Law relating to Contracts (1st September, 1903).

[This Enactment is identical in all material respects with the Indian *Contract Act, 1872*, (Act No. 10 of 1872)¹). It contains, inter alia, the provisions relating to Sale of Goods (§§ 76—123) and Partnership (§§ 239—266).]

Companies.

No. 13 of 1897. An Enactment for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations (22d October, 1897).²

Preliminary.

Short title. 1. This Enactment may be cited as the *Companies Enactment, 1897*, and shall come into operation upon the publication thereof in the *Gazette*.

Imp. § 295; S. S. § 1.

Definitions. 2. In this Enactment, unless there be something repugnant in the subject or context: "Court" means the highest civil court of first instance in the State; "liquidator" includes Official Liquidator; "Registrar" means the Registrar appointed under the provisions of Part V. of this Enactment.

Imp. § 285; S. S. § 3.

Prohibition of partnerships exceeding certain number. 3. [As amended by E. No. 4 of 1903.] No company, association or partnership consisting of more than twenty persons, other than an association of miners working on the Chinese "hun" system, shall be formed in the State for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Enactment.

Imp. § 1; S. S. § 4.

Division of Enactment. 4. This Enactment is divided into seven Parts, relating to the following subject matters: The first Part — to the constitution and incorporation of companies and associations under this Enactment; The second Part — to the distribution of the capital and liability of members of companies and associations under this Enactment; The third Part — to the management and administration of companies and associations under this Enactment; The fourth Part — to the winding-up of companies and associations under this Enactment; The fifth Part — to the registration office; The sixth Part — to the application of this Enactment to unregistered companies; The seventh Part — to miscellaneous provisions.

S. S. § 5.

¹ The Indian *Contract Act, 1872*, is reprinted in full in Baptista, *Commercial Law of the Empire of India*, in this Volume, *ante*. — ² The references are to the Straits Settlements *Companies Ordinance, 1889*, (No. 5 of 1889), reprinted *supra*. Throughout "Enactment" is substituted for "Ordinance" and "Registrar" for "Registrar of Joint Stock Companies." The references in the notes (Imp.) are to the Imperial *Companies (Consolidation) Act, 1908*, (8 Edw. 7, c. 69).

Part I. Constitution and Incorporation of Companies and Associations under this Enactment.

Memorandum of association.

5—6. = S. S. §§ 6—7.

7. = S. S. § 8, except: b) reads as follows: "The place, such place being situate within the Federated Malay States, in which the registered office of the company is proposed to be situate."

8. = S. S. § 9, except: b) reads as follows: "The place, such place being situate within the Federated Malay States, in which the registered office of the company is proposed to be situate."

9. = S. S. § 10, except: b) reads as follows: "The place, such place being situate within the Federated Malay States, in which the registered office of the company is proposed to be situate."

10—11. = S. S. §§ 11—12.

Reduction of capital and shares.

12—19. = S. S. §§ 13—20.

20. = S. S. § 21, except: "every director, manager, or officer" is substituted for "every director or manager."

21. = S. S. § 22, except: "of either description for any period not exceeding one year, or with fine which may amount to \$ 1000" is substituted for "for a term not exceeding one year, or with fine."

22. = S. S. § 23.

Subdivision of shares.

23. = S. S. § 24, except: in 2. "\$ 10" is substituted for "\$ 50."

24. = S. S. § 25, except: "every director, manager, or officer" is substituted for "every director and manager."

Associations not for profit.

[25. Relates to companies formed for purposes not of gain.]

Accumulated profits may be returned to shareholders.

26—28. = S. S. §§ 27—29.

Calls upon shares.

29—30. = S. S. §§ 30—31.

Transfer of shares.

31. = S. S. § 32.

A transfer of shares is subject to the following stamp duties: (a) where the name of the transferee is filled in prior to the execution of the transfer by the transferor, five cents for every \$ 100 or fractional part of \$ 100 of the nominal value of the shares; (b) where the name of the transferee is not filled in prior to the execution of the transfer by the transferor (commonly called a "blank transfer"), thirty cents for every \$ 100 or fractional part of \$ 100 of the nominal value of the shares. "Nominal value" means the full amount or denomination of the share, irrespective of the amount for the time being paid thereon. — E. No. 14 of 1897, Sched.

Share warrants to bearer.

32—36. = S. S. §§ 33—37.

Change of name.

37. = S. S. § 38, except: "the approval of the Resident-General by order in writing under his hand and seal" is substituted for "the approval of the Governor in Council testified in writing under the hand of the Colonial Secretary."

Articles of association.

38—39. = S. S. §§ 39—40.

40. = S. S. § 41, except: in 3. "and to be in the nature of a specialty debt" is omitted.

General provisions.

Registration of memorandum of association and articles of association with fees as in Table C. 41. 1. The memorandum of association and the articles of association, if any, shall be delivered to the Registrar, who shall retain and register the same. 2. There shall be paid to the Registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the Table marked B. in the first Schedule hereto, the several fees therein specified, or such smaller fees as the Resident-General, by notification in the *Gazette* may from time to time direct, and by a company not having a capital divided into shares in respect of the several matters mentioned in the Table marked C. in the first Schedule hereto the several fees therein specified, or such smaller fees as the Resident-General by similar notification may from time to time direct.

Imp. § 244; S. S. § 42.

42—44. = S. S. §§ 43—45.

45. = S. S. § 46, except: in both instances "Resident-General" is substituted for "Governor in Council," and "*Gazette*" for "*Government Gazette*."

Prospectus.

46. = S. S. § 47, except: in 1. "whether subject to adoption by the directors of the company or otherwise" is substituted for "whether subject to adoption by the directors or the company or otherwise;" in 3. "or in any of the Federated Malay States" is inserted after "Colony," and "director, manager, or officer" is substituted for "director or manager."

Part II. Distribution of Capital and Liability of Members of Companies and Associations under this Enactment.

Distribution of capital.

47—49. = S. S. §§ 48—50.

50. = S. S. § 51, except: in 2. "section 32" is substituted for "section 33," and "section 35" for "section 36;" in 3. "director, manager, or officer" is substituted for "director or manager."

51. = S. S. § 52.

52. = S. S. § 53, except: "director, manager, or officer" is substituted for "director or manager."

53—56. = S. S. §§ 54—57.

57. = S. S. § 58, except: in 2. "twenty-five cents" is substituted for "fifteen cents"; in 3. "every director, manager, or officer" is substituted for "every director and manager;" 4. reads as follows: "In addition to the above penalty the Court may by order compel an immediate inspection of the register."

Power to close register. 58. Any company under this Enactment may, upon giving notice by advertisement in the *Gazette*, and in such local newspapers, if any, as may be published in English in the Federated Malay States, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Imp. § 31; S. S. § 59.

59. = S. S. § 60.

60. = S. S. § 61, except: in 1. "or a judge" and "or judge" are omitted; a new subsection is added as follows: "3. Any party aggrieved by any decision of the Court of¹⁾ Judicial Commissioner at any time within one month from the date of such decision."

61. = S. S. § 62, except: "members to²⁾ Registrar" is substituted for "members to the Registrar."

62. = S. S. § 63.

Liability of members.

63—64. = S. S. §§ 64—65.

¹⁾ *Sic*; obviously "the" should be inserted. — ²⁾ *Sic*; obviously "the" omitted.

Part III. Management and Administration of Companies and Associations under this Enactment.

Provisions for protection of creditors.

65. = S. S. § 66, except: "situate within the Federated Malay States" is inserted after "registered office," and "every director, manager, or officer" is substituted for "every director or manager."

66—68. = S. S. §§ 67—69.

Contracts.

69. = S. S. § 70, except: in a) "whether under seal or not" is substituted for "and if made according to English law to be under seal."

Register of charges. 70. 1. Every limited company under this Enactment shall keep a register of all charges specifically affecting property of the company, and shall enter in such register in respect of each charge a short description of the property charged, the amount of charge created, and the names of the persons entitled to such charge. 2. If any property of the company is charged without such entry as aforesaid being made, every director, manager, or other officer of the company who, knowingly or wilfully, authorizes or permits the omission of such entry, shall incur a penalty not exceeding \$ 250. 3. The register of charges required by this section shall be open to inspection by any creditor or member of the company at all reasonable times. If such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding \$ 25, and a further penalty not exceeding \$ 10 for every day during which such refusal continues, and in addition to the above penalty the Court may, by order, compel an immediate inspection of the register.

Imp. §§ 100—102; S. S. § 72.

71—73. = S. S. §§ 73—75.

74. = S. S. § 76, except: in 3. "unconnected with the company" is added at the end of the subsection.

75. = S. S. § 77.

76. = S. S. § 78, except: "or the *Indian Companies Act, 1866*" is omitted.

77. = S. S. § 79, except: "or the *Indian Companies Act, 1866*" is omitted.

78—79. = S. S. §§ 80—81.

80. = S. S. § 82, except: "every director, manager, or officer" is substituted for "every director or manager."

81. = S. S. § 83.

The reference should be to § 75.

82. = S. S. § 84, except: "Federated Malay States" is substituted for "Colony."

83. = S. S. § 85, except: "Resident-General" is substituted for "Governor;" in a) "in the case of a company" is substituted for "in the case of a banking or any other company."

84. = S. S. § 86, except: in both instances "Resident-General" is substituted for "Governor."

85. = S. S. § 87.

86. = S. S. § 88, except: throughout "Resident-General" is substituted for "Governor."

87. = S. S. § 89, except: throughout "Resident-General" is substituted for "Governor."

88. = S. S. § 90.

Notices.

89—91. = S. S. §§ 91—93.

Legal proceedings.

92. = S. S. § 94.

93. = S. S. § 95, except: "any Court" is substituted for "any Judge."

94. = S. S. § 96, except: in both instances "money" is substituted for "moneys."

Alteration of forms.

Forms to be used. Resident-General may alter forms. 95. 1. The forms set forth in the second Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer. 2. The Resident-General may

from time to time make such alterations in the tables and forms contained in the first Schedule hereto, so that he does not increase the amount of fees payable to the Registrar in the said Schedule, or make such additions to the last mentioned forms as he deems requisite. 3. Any such table or form when altered shall be published in the *Gazette*, and upon such publication being made such table or form shall have the same force as if it were included in the Schedule to this Enactment, but no alteration made by the Resident-General in the Table marked A. contained in the first Schedule, shall affect any company registered prior to the date of such alteration, or repeal, as respect such company, any portion of such Table.

Imp. § 118; S. S. § 97.

Arbitrations.

96—119. = S. S. §§ 98—121, except: throughout “Resident-General” is substituted for “Governor.”

120. = S. S. § 122, except: “or Judge” is omitted.

121—122. = S. S. §§ 123—124.

Appeals from orders. 123. Any person aggrieved by any order of the Court with regard to any agreement, reference, arbitration, or award may appeal to the Court of the Judicial Commissioner at any time within one month from the date of such order.

Imp. §§ 178—181; S. S. § 125.

Part IV. Winding-up of Companies and Associations under this Enactment.

Preliminary.

124—128. = S. S. §§ 126—130.

Winding-up by Court.

129. = S. S. § 131.

130. = S. S. § 132, except: in c) in both instances “Federated Malay States” is substituted for “Colony.”

131. = S. S. § 133, except: in 3. throughout “Court” is substituted for “Judge.”

132. = S. S. § 134, except: in 1. “reduced in numbers” is substituted for “reduced in number,” and “or devolved upon” for “or have devolved upon.”

133—140. = S. S. §§ 135—142.

Official liquidators.

141. = S. S. § 143 (1—6).

142—143. = S. S. §§ 144—145.

144. = S. S. § 146, except: in e) “rateable¹)” is substituted for “rateably.”

145—146. = S. S. §§ 147—148.

Ordinary powers of Court.

147—151. = S. S. §§ 149—153.

152. = S. S. § 154, except: “any bank” is substituted for “any local bank or branch bank.”

153. = S. S. § 155, except: “or branch bank” is omitted.

154—161. = S. S. §§ 156—163.

Extraordinary powers of Courts.

162—163. = S. S. §§ 164—165.

164. = S. S. § 166, except: “Federated Malay States” is substituted for “Colony.”

165. = S. S. § 167.

Enforcement of and appeal from orders.

166. = S. S. § 168.

Appeals from orders. 167. Any person aggrieved by any order or decision of the Court made or given in the matter of the winding-up of a company may appeal to the Court of the Judicial Commissioner at any time before the expiration of one month, to be calculated from the time when the order or decision appealed against was made or given.

Imp. § 181; S. S. § 169.

¹) *Sic*; obviously “rateably.”

Affidavits, etc., may be sworn in the United Kingdom or abroad before any competent Court or person. 168. Any affidavit, affirmation, or declaration required to be sworn or made under the provisions or for the purposes of this Part of this Enactment, shall be deemed to be sufficiently sworn or made if sworn or made in the Federated Malay States before any Magistrate of any of those States, or if sworn or made out of the said States, before any judge, magistrate, British consul, or vice-consul: provided that the signature of such judge, magistrate, British consul, or vice-consul is authenticated by his official seal.

Imp. § 228; S. S. § 170.

Voluntary winding-up of a company.

169—171. = S. S. §§ 171—173.

Notice of resolution to wind up voluntarily. 172. Notice of any special resolution or extraordinary resolution passed for winding-up a company voluntarily shall be given by advertisement in the *Gazette*, and in such local newspapers, if any, as may be published in English in the Federated Malay States.

Imp. § 185; S. S. § 174.

173. = S. S. § 175.

174. = S. S. § 176, except: "speciality¹) debt" is substituted for "specialty debt."

175—177. = S. S. §§ 177—179.

178. = S. S. § 180, except: in 2. at the end of the section "thinks fit" is substituted for "thinks just."

179—180. = S. S. §§ 181—182.

Appointment of liquidator. 181. 1. If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court shall forthwith appoint a liquidator. 2. The Court may, on due cause shewn, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up.

Imp. § 149; S. S. § 183.

182. = S. S. § 184, except: "*Gazette*" is substituted for "*Government Gazette*."

183—186. = S. S. §§ 185—188.

Winding-up subject to the supervision of the Court.

187—191. = S. S. §§ 189—193.

Liquidator where supervision order superseded by compulsory order. 192. Where an order has been made for the winding-up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Court shall forthwith appoint a liquidator.

S. S. § 194.

Supplemental provisions.

193—199. = S. S. §§ 195—201.

200. = S. S. § 202, except: "with power of the liquidator" is substituted for "with power for the liquidator".

201. = S. S. § 203, except: "which is at the commencement of this Ordinance or afterwards" is omitted.

202—208. = S. S. §§ 204—210.

209. = S. S. § 212, except: 2. reads as follows: "2. Nothing in this section applies to proceedings by or on behalf of the Government or Ruler of the State."

210. = S. S. § 213, except: in 1. "mortgage" is omitted.

211—214. = S. S. §§ 214—217.

Part V. Registration Office.

Constitution of registration office. 215. The registration of companies under this Enactment shall be conducted as follows, that is to say: a) The Resident-General may appoint a Registrar and such other officers as he may think necessary for the registration of companies under this Enactment, and remove them at pleasure. b) The Resident-General may make such regulations as he thinks fit with respect to the duties to be performed by such Registrar and other officers; c) The Resident-General may from time to time determine the place situate within the Federated Malay States at which an office for the registration of companies is to be established. d) The Resident-General may from time to time direct a seal to be prepared for the authentication of any documents required for or connected with the registration

¹) *Sic*; obviously "specialty."

of companies; e) Every person may inspect the documents kept by the Registrar. There shall be paid for such inspection such fees as may be directed by the Resident-General not exceeding fifty cents for each inspection. Any person may require a certificate of the incorporation of any company, or a copy or extract of any other document, or any part of any other document to be certified by the Registrar. There shall be paid for such certificate of incorporation, certified copy or extract, \$₂ for the certificate of incorporation, and ten cents for each folio of one hundred words of such copy or extract, or such lower fees as the Resident-General may from time to time direct; f) There shall be paid to the Registrar and such other officers as aforesaid employed in the registration of companies such salaries as the Resident-General directs.

Imp. § 243; S. S. § 239.

Part VI. Unregistered Companies.

216. = S. S. § 240, except: in introduction "except railway companies incorporated by Act of Parliament or Ordinance" is omitted; 1. reads as follows: "The principal place of business of an unregistered company shall, for all the purposes of the winding-up of such company, be deemed to be the registered office of the company."

217—221. = S. S. §§ 241—245.

Part VII. Miscellaneous Provisions.

222. = S. S. § 246.

Cognizance of offences. 223. All offences under this Enactment may be tried by a magistrate.

Imp. § 276; S. S. § 247.

224. = S. S. § 248.

225. = S. S. § 249, except: "the Judicial Commissioner subject to the approval of the Resident-General" is substituted for "the Chief Justice with the concurrence of the Governor."

Certified copies of documents to be evidence. 226. Any certificate of the incorporation of any company given by the Registrar shall be received in evidence as though it were the original certificate, and any copy of or extract from any of the documents or part of the documents kept and registered at any office for the registration of companies under this Enactment, if duly certified to be a true copy under the hand of the Registrar, shall in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document.

Imp. § 17; S. S. § 250.

Registrar to enforce Enactment. 227. 1. It shall be the duty of the Registrar to enforce the provisions of this Enactment, and to prosecute in cases where the same are contravened. 2. Such Registrar shall, in the month of January in each year, make and forward to the Resident-General a report on the working of the registry during the preceding year, with particulars of all cases where the provisions of this Enactment have been contravened, and of the proceedings taken by him thereon.

Imp. § 276; S. S. § 253.

Fees. 228. 1. All fees taken by the Registrar under this Enactment shall be paid into the Treasury of the State in which the Registration office is situated, and form part of the public revenue of the Federated Malay States. 2. Any question as to the distribution of the said fees between the different States shall be decided by the Resident-General.

Imp. § 277; S. S. § 254.

First Schedule.

Table A. Regulations for management of a company limited by shares.

[This Table is identical in all material respects with the Straits Settlements Companies Ordinance, 1889, (No. 5 of 1889), Sched. I., Table A., q. v.]

Table B.

[This Table contains table of fees to be paid to the Registrar of Companies by a company having a capital divided into shares.]

Table C.

[This Table contains a table of fees to be paid to the Registrar of Companies by a company not having a capital divided into shares.]

Form D.

[This Form is substantially identical with Form contained in 25 & 26 Vic. c. 89, Sched. I., Form D.]

Second Schedule.

[Forms A—E are substantially identical with 25 & 26 Vic. c. 89, Sched. II., Forms A—E.]

Notification No. 109 of 1898. (22d February, 1898). Appointment of Registrar of Companies.

Under the provisions of section 215 of the Companies Enactment, 1897, the Acting Resident-General has been pleased to appoint the Registrar of Courts, Kuala Lumpur, to be Registrar of Companies for all the Federated Malay States, under the said Enactment, and to direct that the office for the Registration of Companies shall be established at Kuala Lumpur, in the State of Selangor.

Bills of Exchange.

No. 14 of 1898. An Enactment to define and amend the Law relating to Promissory Notes, Bills of Exchange, and Cheques (1st March, 1899).¹⁾

Chap. I. Preliminary.

Short title. 1. This Enactment may be cited as the *Negotiable Instruments Enactment, 1898*.

Commencement. 2. This Enactment shall come into force on a day to be fixed by the Resident by notification in the *Gazette*.

Interpretation. 3. In this Enactment: "Banker" includes also persons or a corporation or company acting as bankers; "Notary public" includes also any person appointed by the Resident, whether by name or office, to perform the functions of a notary public under this Enactment; "Currency note" means a note issued by the Governments of the Federated Malay States or by the Government of the Colony.

Chaps. II—XVI.

[These chapters, comprising §§ 4—137, are identical in all material respects with the Indian *Negotiable Instruments Act, 1881*, (Act No. 26 of 1881)²⁾ chaps. II—XVI, being §§ 4—137.]

Chaps. XVII. Of Notaries Public.

Provisions as to notaries public. 138. 1. Any person entitled by law to practise as a notary public in the Colony may also practise as such notary public in the State. 2. Any such person may charge in the State fees similar to those which he is entitled by law to charge in the Colony. 3. In addition to such notaries public as aforesaid the Resident may, by notification in the *Gazette*, appoint persons, either by name or office, to be notaries public in the State for the purposes of this Enactment, and may in like manner remove any such persons from office, whenever he may think fit. 4. The Resident, with the approval of the Resident-General, may, by notification in the *Gazette*, fix the fees which may be charged by notaries public appointed under subsection 3. and may in like manner from time to time cancel, alter, or add to the same. 5. Until fees have been fixed under subsection 4, notaries public appointed under subsection 3, shall be entitled to charge the same fees as those for the time being lawfully charged by notaries public in the Colony. 6. Any person appointed a notary public under subsection 3, who is an officer in the service of the State, shall pay into the Treasury for the benefit of the general revenue all fees received by him.

Notification No. 295 of 1899.*Table of fees.*

(Fixed by the British Resident, with the approval of the Resident-General, under Section 138, subsection (4) of the *Negotiable Instruments Enactment, 1898*.)

¹⁾ As amended by E. No. 8 of 1899. — ²⁾ The Indian *Negotiable Instruments Act, 1881*, is reprinted in full in Baptista, *Commercial Law of the Empire of India*, in this Volume. The amendments made in the Indian Act in 1885 and 1897 are not adopted in Perak.

| | |
|--|----------|
| 1. Noting bill of exchange or promissory note | \$ 5.00 |
| 2. Protesting bill of exchange or promissory note, including noting. | \$ 10.00 |
| 3. Noting bill of exchange for non-acceptance and subsequently noting and protesting same for non-payment. | \$ 15.00 |
| 4. Notarial copies of documents, per folio | \$ —.50 |
| 5. Any other notarial act in connection with a bill of exchange or promissory note | \$ 1.00 |

2nd March, 1899.

Stamp duties.

A foreign bill of exchange, payable on demand, and bearing the date on which it was made, is subject to a stamp duty of three cents. A bill of exchange of any other kind whatsoever (except a cheque or bank note) and a promissory note of any kind whatsoever (except a bank note) is subject to duty at the rate of five cents for every \$ 100 and for every fractional part of \$ 100 over any multiple of \$ 100 of the amount or value of the money for which the bill or note is drawn or made.

When a bill of exchange is drawn in a set according to the custom of merchants and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from such duly stamped bill be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of a set any other bill of the set which has not been issued or in any manner negotiated apart from such lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of such lost or destroyed bill.

Cheques are subject to a stamp duty of three cents. — E. No. 14 of 1897, Sched.

Bankruptcy.

No. 11 of 1902. An Enactment to establish a Code of Civil Procedure (6th September, 1902).

[This Enactment is identical in all material respects with the Negri Sembilan Enactment No. 7 of 1902, reprinted *infra*.]

2. Selangor.

Contracts.

No. 30 of 1899. An Enactment to define and amend certain Parts of the Law relating to Contracts (23d February, 1900).

[This Enactment is identical in all material respects with the Perak Enactment No. 22 of 1899, *supra*.]

Companies.

No. 9 of 1897. An Enactment for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations (8th October, 1897).¹⁾

[This Enactment is identical in all material respects with the Perak Enactment No. 13 of 1897, reprinted *supra*.]

Bills of Exchange.

No. 16 of 1898. An Enactment to define and amend the Law relating to Promissory Notes, Bills of Exchange, and Cheques (1st March, 1899).²⁾

[This Enactment is identical in all material respects with the Perak Enactment No. 14 of 1898, reprinted *supra*.]

¹⁾ As amended by E. No. 2 of 1903. The stamp duties are the same as in Perak. — ²⁾ As amended by E. No. 10 of 1899. The stamp duties are the same as in Perak.

Bankruptcy.

No. 13 of 1902. An Enactment to establish a Code of Civil Procedure (1st October, 1902).

[This Enactment is identical in all material respects with the Negri Sembilan Enactment No. 7 of 1902, reprinted *infra*.]

3. Negri Sembilan.

Contracts.

No. 23 of 1899. An Enactment to define and amend certain Parts of the Law relating to Contracts (12th December, 1899).

[This Enactment is identical in all material respects with the Perak Enactment No. 22 of 1899, *supra*.]

Companies.

No. 11 of 1897. An Enactment for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations (2d November, 1897).¹⁾

[This Enactment is identical in all material respects with the Perak Enactment No. 13 of 1897, reprinted *supra*.]

Bills of Exchange.

No. 17 of 1898. An Enactment to define and amend the Law relating to Promissory Notes, Bills of Exchange, and Cheques (22d December, 1898).²⁾

[This Enactment is identical in all material respects with the Perak Enactment No. 14 of 1898, *supra*.]

Insolvency.

No. 7 of 1902. An Enactment to establish a Code of Civil Procedure (15th October, 1902).

Chap. XX. Of insolvent Judgment Debtors.

Power to apply for declaration of insolvency. 316. 1. Any judgment debtor against whose property an order of attachment has been made in execution of a decree for money may apply in writing to be declared an insolvent. 2. Any holder of a decree for money may apply in writing that the judgment debtor may be declared an insolvent. 3. Every such application shall be made to the Senior Magistrate's Court.

Contents of application. 317. 1. The application, when made by the judgment debtor, shall set forth: a) That an order for the attachment of his property has been made and the Court by which the order of attachment was made; b) The amount, kind, and particulars of his property and the value of any such property not consisting of money; c) The place or places in which such property is to be found; d) His willingness to put it at the disposal of the Court; e) The amount and particulars of all pecuniary claims against him; and f) The names and residences of his creditors, so far as they are known to or can be ascertained by him. 2. The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court

¹⁾ As amended by E. No. 8 of 1903. The stamp duties are the same as in Perak. — ²⁾ As amended by E. No. 5 of 1899. The stamp duties are the same as in Perak.

by which it was passed, the amount remaining due thereunder, and the place where the judgment debtor resides.

Subscription and verification of application. 318. The application shall be signed and verified by the applicant in manner hereinbefore prescribed for signing and verifying plaints.

Service of copy of application and notice. 319. 1. The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be posted in Court and served at the applicant's expense. Where the applicant is the judgment debtor, on the holder of the decree in execution of which the order of attachment was made, or on the solicitor of such decree-holder, and on the other creditors (if any) mentioned in the application; where the applicant is the decree-holder, on the judgment debtor or his solicitor. 2. The Court may, if it thinks fit, publish notice of the application at the applicant's expense in the *Gazette* and such local newspapers as it thinks fit. 3. Where the applicant is the judgment debtor, the Court may exempt him from any payments under this section other than payments under subsection 2. if satisfied that he is unable to make them.

Power to serve other creditors. 320. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant and applying for leave to be heard on the application.

Procedure at hearing. 321. 1. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment debtor, in the presence of the persons on whom such notice has been served or their solicitors, as to the causes of his insolvency and his circumstances and future means of payment, and shall hear the decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors; and the Court may allow such witnesses to be examined as it may consider necessary. 2. Where a decree-holder is applying for a declaration of insolvency against a judgment debtor, and such declaration is granted by the Court, the examination of the judgment debtor shall be adjourned until after the filing of the statement prescribed by section 327, or he may be re-examined after filing such statement.

Declaration of insolvency and appointment of receiver. 322. If the Court is satisfied that the statements in the application are substantially true, the Court may declare the judgment debtor to be an insolvent, and shall also make an order appointing a receiver of his property. If the Court is not so satisfied, it shall make an order rejecting the application.

Creditors to prove their debts. Schedule to be framed. 323. 1. The creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him; and the Court shall by order determine the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a schedule of such persons and debts, a copy of which shall be posted in the Court House, and the declaration under the last preceding section, hereinafter called "the declaration of insolvency," shall be deemed to be a decree in favour of each of the said creditors for their said respective debts. 2. No creditor of the insolvent shall have any remedy against the property of the insolvent except under this chapter, but nothing in this chapter shall affect the power of any secured creditor to realize his security. 3. Nothing in this chapter shall entitle a partner in an insolvent firm, or when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

Applications by unscheduled creditors. 324. 1. Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved. 2. Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature, or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature, or particulars of the debt of another creditor. 3. In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the

other creditors, and hearing their objections, if any, may comply with or reject the application.

Effect of order appointing receiver. 325. Every order under this chapter appointing a receiver shall be published in the *Gazette*, and every such order shall operate to vest in the receiver all the insolvent's property (except the particulars specified in the first proviso to section 252), whether set forth in this application or not. Every declaration of insolvency shall also be published in the *Gazette*.

Receiver to give security and collect assets. 326. The receiver so appointed shall give such security as the Court may direct and shall possess himself of all such property, except as aforesaid.

Where judgment debtor is declared insolvent on application of decree-holder. 327. 1. In cases in which the judgment debtor is declared insolvent on the application of a decree-holder, the judgment debtor shall, within fourteen days after the declaration of insolvency is made, file in Court a statement setting forth the particulars prescribed by clauses b), c), e) and f) of section 317. 2. Such statement shall be signed and verified by the judgment debtor in manner hereinbefore prescribed for signing and verifying plaints. 3. If the Court, when it makes the declaration of insolvency, shall be satisfied by evidence on oath that there is reasonable ground for suspecting that the judgment debtor is about to abscond, the Court may order that the judgment debtor be arrested and kept in custody until he has filed the statement prescribed by this section or until the expiration of six months from his arrest, whichever shall first happen. 4. If the judgment debtor, not having been arrested under subsection 3., shall neglect or refuse to file the statement within the period prescribed by subsection 1., the Court may order him to be arrested and kept in custody until he has filed such statement or until the expiration of six months from his arrest, whichever shall first happen.

Duty of receiver. 328. 1. The receiver shall proceed under the direction of the Court: a) To convert into money the insolvent's property vested in the receiver as aforesaid; b) To pay thereout debts, fines and penalties (if any) due by the insolvent to Government; c) To pay decree-holder's costs when the declaration of insolvency has been made on the application of a decree-holder; d) To discharge, according to their respective priorities, all debts secured by mortgage of, or charge or lien on, the insolvent's property; e) To pay the wages of laborers (if any) in accordance with section 3. of the *Labourers' Wages Priority Enactment, 1899*; f) To pay all wages or salary of every clerk, servant, labourer, or workman, other than labourer, referred to in clause e), not exceeding two hundred dollars, in respect of services rendered to the insolvent during three months before the date of the declaration of insolvency; g) To distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference. 2. Such receiver, not being a salaried officer of the Government other than an official receiver, may retain as a remuneration for the performance of his duties a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus, if any, to the insolvent or his legal representative.

Effect of discharge. 329. An insolvent discharged under section 330, or duly liquidating his debts under section 333, shall not be arrested or imprisoned on account of any of the scheduled debts; but, subject to the provisions of the next following section, the property of an insolvent, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 252 and except the property vested in the receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied in full or until the expiry of twelve years from the date of the declaration of insolvency.

Declaration that insolvent is discharged from liability. 330. In the event of the receiver certifying, or of the Court being otherwise satisfied, that the insolvent has placed the receiver in possession of all the insolvent's property which has become vested in the receiver, or that the insolvent has done everything in his power for that purpose, then, if the aggregate amount of the scheduled debts is one hundred dollars or less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third or after the expiry of twelve years from the declaration of insolvency, the Court shall declare the insolvent to be discharged from further liability in respect of such debts.

Procedure in case of dishonest debtor. 331. 1. Whenever, at the examination under section 321 it is proved that the judgment debtor has: a) Been guilty, in his application, or on his examination, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust; or b) Fraudulently concealed, transferred, or removed any property, the Court may sentence him by order in writing in a summary manner to imprisonment of either description for a term which may extend to three months. 2. Or, instead of sentencing the judgment debtor as aforesaid, the Court may order the Public Prosecutor to prosecute him for committing any offence against this section, to be specified in such order, and the judgment debtor if convicted shall be liable to imprisonment of either description for a term which may extend to one year.

Discovery of debtor's property.

Court may enquire as to debtor's property. 332. 1. The Court may, on the application of the receiver or of a creditor, at any time after a declaration of insolvency has been made against a judgment debtor (in this section called "the debtor"), summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property. 2. If any person so summoned, after having been tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination. 3. The Court may examine on oath any person so brought before it concerning the debtor, his dealings or property. 4. If any person on examination before the Court admits that he is indebted to the debtor, the Court may, on the application of the receiver or creditor, order him to pay to the receiver, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without cost of the examination. 5. If any person on examination before the Court admits that he has in his possession any property belonging to the debtor, the Court may, on the application of the receiver or creditor, order him to deliver to the receiver such property, or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just.

Composition or scheme of arrangement.

Composition in satisfaction of debts of insolvent. 333. 1. The scheduled creditors of a judgment debtor who has been declared insolvent (in this section called "the insolvent") may resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the insolvent or a proposal for a scheme of arrangement of the insolvent's affairs. 2. The composition or scheme shall not be binding on the creditors unless it is accepted by a majority in number, representing three-fourths in value, of the scheduled creditors, and is approved by the Court. 3. The insolvent, or any scheduled creditor, may apply to the Court to approve the composition or scheme and any such creditor may be heard either for or against such application. 4. Such application shall not be heard until the Court is satisfied, a) That the insolvent has been thoroughly examined before the Court as to the causes of his insolvency, his circumstances, and his future means of payment; and b) That notice, by advertisement or otherwise, has been given to every creditor of the insolvent, in sufficient time to enable such creditor to apply to the Court, if he should so desire, for an order directing his name to be inserted in the schedule. 5. Notice of the time appointed for hearing the application shall be sent by the Court to each of the scheduled creditors. 6. If the Court is of the opinion that the terms of the composition or scheme are not reasonable, or are not calculated to benefit the general body of creditors, the Court shall, and in any other case the Court may, at its discretion, refuse to approve the composition or scheme. 7. If the Court approves the composition or scheme, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the composition or scheme, or by the terms being embodied

in an order of the Court. 8. A composition or scheme accepted and approved in pursuance of this section shall be binding on all creditors of the insolvent so far as relates to any debts due to them from the insolvent which have been or might have been scheduled. 9. A certificate of the Court that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity. 10. The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court. 11. If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme can not in consequence of legal difficulties or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any creditor, again declare the debtor insolvent, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done under or in pursuance of the composition or scheme. Where a debtor is declared insolvent under this subsection, any debt valid in other respects, which has been contracted before the date of the declaration of insolvency may be entered by the Court in the schedule. 12. No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed by law to be so paid in the distribution of the property of an insolvent. 13. No costs incurred by a debtor of, or incidental to, an application to approve of a composition or scheme, shall be allowed out of the estate if the Court refuses to approve the composition or scheme. 14. At the time a composition or scheme is approved of the Court may correct or supply any accidental or formal slip, error, or omission therein, but no alteration in the substance of the composition or scheme shall be made. 15. When a composition or scheme is approved of, the receiver (if any) shall forthwith put the debtor (or, as the case may be, the trustee under the composition or scheme) into possession of the debtor's property. The Court shall also rescind the declaration of insolvency, and the order (if any) appointing a receiver. 16. In every case of a composition in which a trustee is not appointed to distribute such composition, the Court may require a trustee to be appointed, and may refuse to approve the composition unless and until this is done. 17. Where under a composition or scheme of arrangement a trustee is appointed to distribute a composition or to administer the debtor's affairs or to manage his business, such trustee shall, unless expressly exempted therefrom by order of the Court, give security to the satisfaction of the Court for the due performance of his trust. The Court may refuse to approve the composition or scheme unless such security is given.

4. Pahang.

Contracts.

No. 1 of 1900. An Enactment to define and amend certain Parts of the Law relating to Contracts (29th March, 1900).

[This Enactment is identical in all material respects with the Perak Enactment No. 22 of 1899, *supra*.]

Companies.

No. 19 of 1897. An Enactment for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations (29th November, 1897).¹⁾

[This Enactment is identical in all material respects with the Perak Enactment No. 13 of 1897, *reprinted supra*.]

¹⁾ As amended by E. No. 3 of 1903. The stamp duties are the same as in Perak.

Bills of Exchange.

No. 5 of 1899. An Enactment to define and amend the Law relating to Promissory Notes, Bills of Exchange, and Cheques (7th February, 1899).¹⁾

Bankruptcy.

No. 11 of 1902. An Enactment to establish a Code of Civil Procedure (24th September, 1902).

[This Enactment is identical in all material respects with the Negri Sembilan Enactment No. 7 of 1902, reprinted supra.]

III. Johore, Kedah, Perlis, Kelantan, and Trengganu.

Introduction.²⁾

History and government.

The State of Johore is controlled in its foreign relations by Great Britain by virtue of the treaty of 1885. A British officer has been appointed General Adviser to the Johore Government³⁾. The country is governed by District Headmen, under the Sultan.

The States of Kedah, Perlis, Kelantan, and Trengganu comprise the territory over which Siam transferred to Great Britain such rights of suzerainty, protection, administration, and control as were possessed by the former country, under the treaty of 10th March, 1909. British officers have been appointed Advisers to the Governments of Kedah, Perlis, and Kelantan. There is a British Agent at Trengganu. The government is organized on lines somewhat similar to those of the Malay States belonging to the Federation.

Law in force.

The law in force is the Mohammedan law, as varied by local enactments and customs⁴⁾. Natives and non-natives are governed by the same system of law, except in matters of religion. There appear to be⁵⁾ no local Enactments dealing with topics within the scope of the present work.

Courts and procedure.

In Johore the judicial organization comprises the Court of His Highness the Sultan in Council, the Supreme Court, Courts of Magistrates of the First Class, Courts of Magistrates of the Second Class, Courts of Magistrates of the Third Class, and Courts of Kathis and Assistant Kathis. The Court of the Sultan in Council consists of the Sultan or his representative and has appellate jurisdiction in civil cases, except where the value of the subject matters is less than \$ 500, or when judgment was entered by consent, or where it relates to costs only. The Supreme Court

¹⁾ As amended by E. No. 18 of 1899. The stamp duties are the same as in Perak. —

²⁾ The author desires to express his indebtedness to the British Adviser to the Government of Kelantan, and to J. G. Richey, Esq., Assistant Adviser to the Government of Kedah, for valuable information regarding the laws of the Malay States. — ³⁾ As to the political status of the Sultan of Johore, see *Mighell v. Sultan of Johore*, (1894), 1 Q. B. 149; *Ravena Mana Chena Allagappa Chitty v. Tunku Allum Bin Sultan Allie Iskander Shah*, (1883), 8 A. C. 751. —

⁴⁾ Several compilations of Malay law have been made. They are not authoritative. There seem to be no compilations of local enactments. Since September, 1910, the Johore Enactments appear in the *Johore Government Gazette*. In the other States the Enactments are published in pamphlet form, sometimes only in the original language, sometimes accompanied by an English translation. — ⁵⁾ On 1st January, 1912.

consists of a Judge of the Supreme Court, and has appellate jurisdiction over all inferior courts, and general original jurisdiction. Courts of Magistrates of the First Class have civil jurisdiction up to \$ 500 inclusive, Magistrates of the Second Class up to \$ 100, and Magistrates of the Third Class up to \$ 50. The Courts of Kathis or Assistant Kathis have jurisdiction in questions concerning Mohammedan religion, marriage, and divorce¹).

The judicial organization of Kedah comprises the following Courts: The Court of the State Council, the Appeal Court, the High Court, the Sheriah Court, the Small Court at Kota Star, and the District Courts. The Court of the State Council has general supervision over all Courts, and exercises original as well as appellate jurisdiction. The Appeal Court has appellate jurisdiction over the High Court and the Sheriah Court. The High Court is a Court of general jurisdiction. The Sheriah Court has jurisdiction in marriage and divorce. The First Magistrate sitting in the Small Court at Kota Star and the District Officers (except at Yen, Baling, and Padang Trap) have jurisdiction in cases where the amount does not exceed \$ 500. The Second Magistrate at Kota Star and the Assistant District Officers at Yen, Baling, and Padang Trap have jurisdiction in cases where the amount involved does not exceed \$ 200²).

The judicial organization of Kelantan comprises the High Court exercising general and original appellate jurisdiction, First Class Courts, with civil jurisdiction where the amount involved does not exceed \$ 500, and Second Class Courts, with civil jurisdiction where the amount involved does not exceed \$ 100³).

IV. North Borneo.

Bibliography.

Collections of Proclamations.

Proclamations and ordinances of British North Borneo. London. 1887.

***Guerltz**, Edward Peregrine: Proclamations and notifications of the State of North Borneo which are still in operation. Sandakan. 1902.

British North Borneo Herald and Official Gazette. Monthly. Sandakan.

Official Gazette. Sandakan.

Works on Commercial Law.

Partnership Limited Liability Ordinance of the Colony of Fiji, partly adopted in British North Borneo, 1883. Sandakan. 1886.

Introduction.⁴)

The State of North Borneo comprises the whole of the northern portion of the island of Borneo from the Sipitong River on the west to latitude 4° 10' N. on the east coast, together with the adjacent islands. It extends from 115° 20' to 119° 20' E. long., and from 4° 10' to 7° 25' N. lat. The southern boundary was settled by a convention signed at London on 20th June, 1891⁵).

History and government.⁶)

The date of the discovery of the island of Borneo is disputed. Some authorities state that the island was visited by Europeans as early as 1322. Others attribute the

¹) E. No. 2 of 1911. — ²) E. No. 13 of 1910 (A. D. 1910). — ³) E. No. 5 of 1910. —

⁴) The author desires to express his indebtedness to A. C. Pearson, Esq., Government Secretary of North Borneo, for the texts of the Proclamations and Notifications of the State, and for other valuable information. — ⁵) *Colonial Office List*, 1910, p. 413. — ⁶) See also *Colonial Office List*, 1910, pp. 413—414; *Encyclopedia of the laws of England* (2d ed.) Vol. 10, pp. 21—23; Keppel, *Expedition to Borneo*; Brooke, *Ten years in Sarawak*; St. John, *Life of Sir Charles Brooke*; St. John, *Rajah Brooke*; Low, *Residence in Sarawak*.

* This is regarded as an official compilation.

discovery to Lorenzo de Gomez (1518), others to Don Jorge de Menezes (1526). The earliest commercial intercourse appears to have been with the Portuguese. At the close of the 16th century the Spanish succeeded in opening up a trade with Brunei, and in the first years of the 17th century the Dutch and English trade began. Dutch influence remained paramount on the west and south coasts, while the attention of the English was directed to the northern parts of the island. In 1756 the English obtained a cession of the island of Balambangan, and in 1762 an English settlement was established on this island by the East India Company, but was subsequently abandoned. In 1842 Sir James Brooke established the State of Sarawak. The greater portion of what is now the State of North Borneo was ceded in 1877 and 1878 by the sultans of Brunei and Sulu to a syndicate formed by Baron Overbeck and Mr. (now Sir Alfred) Dent. The rights of this syndicate were acquired in 1881 by the British North Borneo Provisional Association, and transferred by this Association to the British North Borneo Company in the following year. Some further cessions have since been added to the Company's territory. The British North Borneo Company obtained a charter on 1st November, 1881¹⁾. By agreement of 12th May, 1888, the British Government assumed a formal protectorate over the territory, under the terms of which the foreign relations of the State of North Borneo are controlled by the British Government, but all internal administration remains in the hands of the Company.

The territory is administered by a Court of Directors in London, appointed under the Royal Charter. The local administration is in the hands of a Governor appointed by the Court of Directors. The Governor is assisted by a Council, and is vested with both executive and legislative functions.

Law in force.

The law is based on the Indian Penal Code, Criminal Procedure Code and Civil Procedure Code, and certain other Indian Acts specifically adopted, with an adaptation in special instances of acts in force in the British Colonies²⁾. The laws and customs of the inhabitants of the State, in so far as they are not inhumane, unconscionable, or contrary to public policy, are applied by the Court³⁾.

The making, operation, assignment, and discharge of contracts are governed by the Indian Contract Act⁴⁾ and the Indian Breach of Contract Act⁵⁾. The transfer of property is regulated by the Indian Transfer of Property Act⁶⁾. Powers of attorney are regulated by The Powers of Attorney Proclamation, 1901⁷⁾, the

¹⁾ The Charter is published in full in the *London Gazette*, 8th November, 1881, pp. 5448—5453. — ²⁾ *Colonial Office List*, 1910, p. 414. — ³⁾ P. No. 17 of 1903, § 7, as amended by P. No. 5 of 1907, § 3. See also N. No. 180 of 1903, §§ 2, 3, 7. On native customs, see Roth, *Natives of Sarawak and British North Borneo*. — ⁴⁾ Act No. 9 of 1872, adopted by P. No. 17 of 1903, Sched. B., reprinted in full, *infra*. The Indian Contract Act, 1872, contains *inter alia* the provisions relating to sale of goods and partnership. As to the latter see also P. No. 1 of 1883. — ⁵⁾ Act No. 13 of 1859, adopted by P. No. 17 of 1903, Sched. B., reprinted in full, *infra*. — ⁶⁾ Act No. 4 of 1882, adopted by P. No. 5 of 1907, § 4.

⁷⁾ No instrument purporting to create a power of attorney executed after the commencement of this Proclamation shall have any validity to create such power within the State, unless its execution shall be verified by the attestation of one or more witnesses. Except in the case of instruments executed and used for the sole purpose of carrying out transactions in an office of the Lands Department, no instrument purporting to create a power of attorney shall, after the commencement of this Proclamation, have any validity to create such power within the State until it, or a true copy thereof, duly compared therewith, and marked with the words "true copy" by the Registrar, shall have been deposited in the office of a First Class Magistrate, and any instrument so deposited or of which a true copy has been so deposited shall, so far as may not be incompatible with the terms thereof, continue to be in force until notice in writing of the revocation thereof by the donor, or of the renunciation thereof by the donee, shall have been deposited in the said office, or until either the donor or the donee dies, or the donee becomes of unsound mind, or the donor is adjudicated an insolvent under any law for the time being in force for the relief of insolvent debtors, or is adjudicated to be of unsound mind. A separate file of documents so deposited shall be kept by the Registrar, who shall enter, in a register to be kept for that purpose, short particulars of each document, together with any subsequent revocation or other determination thereof, of which he shall have had notice; and any person may, upon payment of a fee of fifty cents, search such register and file and inspect any document so deposited, and an office copy of any such document shall be delivered to him on request and on payment of a fee of fifteen cents per folio of one hundred words or part thereof. A copy of any document so deposited may be presented at the said office and, upon payment of a fee

licensing of auctioneers and sales by auction by the Auctioneers Proclamation, 1898¹⁾, and the fraudulent marking of merchandise, by the Merchandise Marks Proclamation, 1891²⁾. The lending of money at interest is subject to certain restrictions under the Money Lenders Proclamation, 1901³⁾. There are no enact-

of fifty cents may after verification be marked by the Registrar as an office copy. An office copy of any document so deposited, when marked as provided in the last preceding section, shall without further proof, be sufficient evidence of the contents of such document and of the deposit thereof in the Registrar's Office. It shall be the duty of the Registrar, upon the application made orally or in writing of any person desirous of obtaining information respecting any specified document registered in his office or as to the existence or otherwise of a document of any specified tenor, and upon the payment thereof of a fee of one dollar, to furnish such person with the information required to the best of his ability, but so that such fee shall not include the expense of any copy or copies required under the provisions of section 4 hereof. — P. No. 20 of 1901, §§ 2–7.

¹⁾ P. No. 1 of 1898 The provisions of this Proclamation are as follows. 1. This may be cited as the *Auctioneers Proclamation, 1898*, and shall come into force on a day to be fixed by the Governor by notification in the *Gazette*. 2. No person shall act as auctioneer until he shall have taken out a license, for which the fees provided in the Schedule shall be paid. This section does not apply to property of the Government or of any deceased Government official sold under special authority. 3. Licenses shall be issued by the Secretary to Government for Sandakan, and by the District Officer for places within their jurisdiction, who shall have power to refuse licenses if they shall think fit. 4. Licenses shall be renewed annually, and each license must be applied for at least one month before the expiration of the current license. 5. Every licensed auctioneer shall obtain, by public competition, the highest possible price for the property entrusted to him, and shall take all reasonable measures, by issue of notices or otherwise, to ensure publicity to the sale. 6. No auctioneer shall buy on his own account property which he is employed to sell, and may only purchase such property as the agent of some person who has employed him to do so. 7. No auctioneer shall dispose of property entrusted to him by private contract without the consent, in writing, of the owner of such property first had and obtained. 8. The owner of property may employ an agent to bid, or may bid himself at ordinary sales, but not if the sale is "without reserve." No sale shall be binding if more than one person shall have been employed by the owner to bid for the same property. 9. No auctioneer may depute another person to perform his duty without special sanction in writing. 10. The commission and fees chargeable by auctioneers in respect of sales shall not exceed those set out in the Schedule. 11. For any breach of sections 5, 6, 7, 9, and 10 an auctioneer shall be liable, upon conviction, to have his license cancelled. 12. Any person acting as an auctioneer without a license or otherwise in contravention of this Proclamation shall be liable, upon conviction, to a fine not exceeding one hundred dollars. 13. The Schedule may be amended from time to time by notification in the *Gazette*.

²⁾ P. No. 9 of 1891, as amended by P. No. 6 of 1893. P. No. 9 of 1891 is substantially identical with the *Imperial Merchandise Marks Act, 1887*, (50 & 51 Vic. c. 28, §§ 2 (1–3) 12, 14–20.)

³⁾ P. No. 19 of 1901 (as amended by N. No. 84 of 1906). The provisions of this Proclamation are as follows: 1. This Proclamation may be cited as the *Money Lenders Proclamation, 1901*, and shall come into operation on the publication thereof in the *Gazette*. 2. "Money lender" means any person who lends money upon usury as a business to any Asiatic other than Chinese, or to any public servant who is in the receipt of less than \$ 1800 per annum as salary. 3. No person shall carry on the business of a money lender unless he is registered as such and has obtained a license. 4. The register shall contain the place of residence of the money lender, and such place shall be within a radius of three miles from a Government Station in the district in which the license is issued. 5. Licenses may be obtained from the District Officer at out-stations and from the Chief Police Officer in Sandakan, and shall have effect only in the district in which they are issued. 6. Licenses shall be granted quarterly, and a fee of \$ 5 shall be charged for every license. Every license shall expire on the last day of the quarter in which it was issued. 7. An acknowledgment in writing shall be made for every loan, and such documents shall be stamped with the value provided in the Stamp Proclamation for the time being. 8. The rate of interest to be charged on loans shall not exceed 15%, if secured, and 24%, on note of hand only, per annum. 9. Every money lender shall keep a register showing the name, sex, age, and nationality of every person to whom a loan is made, the amount borrowed, the rate of interest, the security, if any, and such register shall be produced for the inspection of any magistrate on demand. 10. All existing loans made to persons included in section 2 shall be registered in accordance with the provisions of section 9 of this Proclamation, and no action shall be maintained in respect of any loan which is not so registered within six months from the commencement of this Proclamation. 11. It shall be lawful for the Governor to vary the license fees or rates of interest, and to make rules from time to time by notification in the *Gazette* for the effective working of this Proclamation. 12. Any person offending against the provisions of section 3 shall upon conviction be liable to a fine not exceeding \$ 500, or to simple imprisonment not exceeding six months. Any person offending against the provisions of sections 7, 8, or 9 shall upon conviction be liable to a fine not exceeding \$ 100, or to simple imprisonment not exceeding six weeks.

ments in force relating to negotiable instruments¹). Bills of sale are regulated by the Bills of Sale Proclamation, 1891²). The provisions relating to insolvency are contained in the Insolvency Proclamation, 1911³).

¹) In 1894 the Government expressed in the *Official Gazette* the intention of adopting the Indian Negotiable Instruments Act, with its amendments, but this intention had not been carried into effect up to 17th March, 1910. Bank cheques payable on demand to any person, to bearer, or order, are subject to a stamp duty of three cents. Bills of exchange drawn out of but payable on demand within the State, not being cheques, and bearing the date on which they were made, are subject to a stamp duty of three cents. Bills of exchange of any other kind whatsoever, except cheques or bank notes, and promissory notes of any kind whatsoever except bank notes, are subject to stamp duty at the rate of five cents for every \$ 100 or part thereof. When bills of exchange or other documents are drawn in sets of two or more, the duty is payable on one document in such set only. In the case of bills in sets drawn out of the State, the whole duty shall be payable on that part of the set which is first presented for payment or acceptance, or is first otherwise negotiated, the other parts of the set being free. Notes of protest with regard to any promissory notes or bills of exchange are subject to a stamp duty of twenty-five cents. — P. No. 19 of 1903, Sched.

²) P. No. 11 of 1891. The principal provisions of this Proclamation are as follows: Every bill of sale shall be duly attested and shall be registered under this Proclamation within three clear days after the execution thereof, or if it is executed in any place out of the Territory where it is required by this Proclamation to be registered, then within three clear days after the time at which it would in the ordinary course of post arrive in the Territory if posted immediately after the execution thereof, and shall truly set forth the consideration for which it was given, otherwise the following consequences shall ensue, that is to say: a) in the case of a bill of sale made or given by way of security for the payment of money by the grantor thereof such bill of sale shall be void in respect of the personal chattels comprised therein; and b) in the case of any other bill of sale it shall be void against all trustees or assignees of the estate of the person whose chattels or any of them are comprised in such bill of sale under the law of bankruptcy or liquidation or under any assignment for the benefit of the creditors of such person and also as against all sheriff's officers and other persons seizing any chattels comprised in such bill of sale in the execution of any process of any Court authorizing the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale, which at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment or of executing such process (as the case may be), and after the expiration of such three days are in the possession or apparent possession of the person making such bill of sale, or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be. Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale so long as they remain or are in or upon any house, ware-house, shop, building, vessel, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken or given by or to any other person. Personal chattels comprised in a valid bill of sale which is duly attested and registered under this Proclamation shall not, so long as such bill of sale continues to be duly registered under this Proclamation, be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the law of bankruptcy. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale, and such bill of sale (save as hereinafter mentioned) shall have effect only in respect of the personal chattels specifically described in the said schedule and shall be void in respect of any personal chattels not so specifically described. Save as hereinafter mentioned every bill of sale shall be void in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale. Nothing in this section contained shall render a bill of sale void in respect of any of the following things, that is to say: a) any growing crops separately assigned or charged, where such crops were actually growing or in course of preparation for packing, but not yet packed at the time when the bill of sale was executed; b) any fixtures separately assigned or charged, and any plant or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, plantation, factory, workshop, warehouse, or other place in substitution for any of like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale. Subject and without prejudice to the other provisions of this Proclamation for invalidating bills of sale, every bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void in the following cases, that is to say: a) if the amount the payment of which is thereby secured is less than one hundred dollars; or b) if it is not made in the form set forth in the first Schedule hereto; or c) if it is made or given wholly or in part in consideration of a pre-existing debt. — Ibid. §§ 6—8. A bill of sale does not protect chattels against recovery of rent or of rates or debts due to the government. Where two or more bills of sale are given comprising the same chattels, they have priority in the order of the date of their registration. — Ibid. §§ 9, 13. — ³) P. No. 4 of 1911.

Courts and procedure.

The judicial system of the State comprises the High Court, the Sessions Court, Magistrates Courts, Mixed Courts, and Headmen's Courts. The High Court consists of the Chief Judge, the Judicial Commissioner, and such other Sessions Judge or Judges as may be added by the Governor, with the approval of the Court of Directors¹⁾. A single Judge of the High Court may act alone where there has been a reference by a subordinate court, or a petition for revision by a party to a case under chapter 32 of the Criminal Procedure Code and chapter 46 of the Civil Procedure Code, and also on appeal from the Sessions Court, provided that the Judge who hears such appeal shall be senior to the Judge who heard and decided the case in the Sessions Court. On the application of any party the single Judge shall reserve for the consideration of the full bench of the High Court any question of law which may arise, the determination of which would, in his opinion, affect the event of the issue in trial. A single Judge may also act in certain other cases²⁾. The High Court has jurisdiction in every case, civil or criminal, subject to such conditions in the exercise of the same as are prescribed by any law³⁾.

The Sessions Court consists of the Judicial Commissioner, or of such other officer empowered as a Sessions Judge whom the Governor, the Chief Judge, or the Judicial Commissioner may direct to act in any particular case of emergency⁴⁾. The Sessions Court has a jurisdiction similar to that of the High Court, except in cases in which the High Court is named as the Court to exercise jurisdiction in the Civil and Criminal Procedure Codes, or in any other local law⁵⁾.

A Magistrate's Court consists of a single Magistrate. Any Magistrate may sit and adjudicate, whether appointed to the particular magisterial division in which such Court is held or not, provided he is so directed by the Governor or requested by the Magistrate in charge of the local Court⁶⁾. Magistrate's Courts have criminal jurisdiction as provided in the Criminal Procedure Code, as extended or limited by any special law, and civil jurisdiction according to the class to which the Magistrate belongs. Magistrates of the first class have jurisdiction in all suits of a civil nature, where the amount in controversy does not exceed \$ 500; Magistrates of the second class, where the amount does not exceed \$ 250; and Magistrates of the third class, where the amount does not exceed \$ 100⁷⁾.

A Mixed Court consists of a Magistrate and at least two local headmen⁸⁾, and has the jurisdiction and powers of a Court, of a Magistrate of the first class⁹⁾.

A Headman's Court consists of the Headmen appointed under the Village Administration Proclamation, 1903, or Proclamations in amendment or substitution thereof, to exercise jurisdiction in any village¹⁰⁾. A Headman is empowered within his district to try summarily certain criminal cases, and to hear and determine any civil suit where the amount involved does not exceed in value \$ 50, and where the action is for a wrong of a nature similar to that which a Magistrate in the exercise of his civil jurisdiction may hear and determine, and actions the causes of which arise exclusively from breach of the laws or customs (religious or sexual) of the plaintiff's race¹¹⁾. The jurisdiction of a Headman is limited to cases in which both parties are Asiatics¹²⁾. Where the jurisdiction is exercised in actions the cause of which arise exclusively from breach of the laws or customs (religious or sexual) of the plaintiffs' race, it shall extend to such amount as is allowed by such laws or customs¹³⁾.

Procedure is governed, in the absence of local regulations, by the Indian Civil Procedure Code¹⁴⁾, and Evidence Act¹⁵⁾. Appeals are, subject to local regulations, granted in conformity with the provisions of the Civil Procedure Code¹⁶⁾, and are

1) P. No. 17 of 1903, § 5, as amended by P. No. 5 of 1907, § 3. — 2) N. No. 87 of 1904, § 1. — 3) P. No. 17 of 1903, § 6, as amended by P. No. 5 of 1907, § 3. — 4) P. No. 17 of 1903, § 5, as amended by P. No. 5 of 1907, § 3. — 5) P. No. 17 of 1903, § 6, as amended by P. No. 5 of 1907, § 3. — 6) P. No. 17 of 1903, § 5, as amended by P. No. 5 of 1907, § 3. — 7) P. No. 17 of 1903, § 6, as amended by P. No. 5 of 1907, § 3. — 8) P. No. 17 of 1903, § 5, as amended by P. No. 5 of 1907, § 3. — 9) P. No. 17 of 1903, § 6, as amended by P. No. 5 of 1907, § 3. — 10) P. No. 17 of 1903, § 5, as amended by P. No. 5 of 1907, § 3. — 11) P. No. 14 of 1903, § 6, N. No. 180 of 1905, § 2. — 12) N. No. 180 of 1905, § 3. — 13) N. No. 55 of 1904. — 14) Act No. 5 of 1908, adopted by P. No. 17 of 1903, Sched. B. — 15) Act No. 1 of 1872, adopted by P. No. 17 of 1903, Sched. B. — 16) Act No. 14 of 1882, adopted by P. No. 17 of 1903, Sched. B. For a correlation of the Courts of North Borneo with the courts referred to in the adopted Acts, see P. No. 17 of 1903, § 4, reprinted, *infra*.

always to the Court of next higher jurisdiction¹). Appeals must be prosecuted within the periods prescribed by the Indian Limitation Act²). An appeal from the Headman's Court in the Sandakan District lies to the Magistrate's Court, and in other districts to the District Officer³). Where the Limitation Act provides no period of limitation, the appeal must be prosecuted within thirty days⁴). The limitation of actions is governed by the Indian Limitation Act⁵).

Statutes.⁶

Application of Law.

P. No. 17 of 1903. To consolidate and amend the Law relating to the Administration of Justice (1st October, 1903).

Short title. 1. This Proclamation may be cited as *The Procedure Proclamation, 1903*.

Repeal. 2. The Proclamations and Notifications enumerated in Schedule A hereto are repealed.

Adoption. 3. The Acts of the Government of British India named in Schedule B hereto, subject to the amendments noted at the foot thereof, are adopted in this State. The rules of equity in force in British India are in force in North Borneo. In the absence of local proclamation or Indian legislation specially adopted, the principles of the common law of British India are applied. — N. No. 38 of 1911, §§ 1, 2.

Courts declared. 4. [As amended by P. No. 5 of 1907, § 3.] The Courts of the State and their correlation to the Courts referred to in the adopted Codes are as follows:

Correlative to

| Name. | Criminal Code. | Civil Code. |
|---------------------------------------|--|------------------------------------|
| I. The High Court. | The High Court. | The High Court. |
| II. The Sessions Court. | The Sessions Court. | The District Court. |
| III. First Class Magistrates' Courts. | Courts of Magistrates of the First Class. | Provincial Courts of Small Causes. |
| IV. Second Class Magistrates' Court. | Courts of Magistrates of the Second Class. | do. |
| V. Third Class Magistrates' Courts. | Courts of Magistrates of the Third Class. | do. |
| VI. Mixed Courts. | | |
| VII. Headman's Courts. | | |

[5—7. Relating to organization and jurisdiction of Courts, are repealed by P. No. 5 of 1907.]

[8. Relates to confirmation of sentences of death.]

9. In all cases where appeals lie, such appeal shall be instituted in the Court of next higher jurisdiction.

Rules. 10. It shall be lawful for the Governor, on the motion of the High Court, to make Rules for the following purposes: a) Declaring the further correlation of terms used in the adopted enactments with those that may be suitable for analogous circumstances in the State, where, the *General Clauses Proclamation, 1903*, notwithstanding, this may be found necessary; b) Fixing fees leviable in the Courts of the State; c) Directing the conduct and distribution of business, and the sittings of the Courts.

¹) P. No. 17 of 1903, § 8. — ²) Act No. 15 of 1877, adopted by P. No. 17 of 1903, Sched. B. — ³) N. No. 180 of 1903, § 6. The Revising Magistrate or District Officer is required to apply the laws or customs (religious or sexual) of the parties concerned. — Ibid. § 7. — ⁴) P. No. 5 of 1907, § 10. — ⁵) Act No. 15 of 1877, adopted by P. No. 17 of 1903, Sched. B. The Act of 1877 has been superseded by Act No. 9 of 1908. — ⁶) As in force 1st January, 1912.

*Schedules.**Schedule A.*

| | | |
|--------------|--------------|--|
| Proclamation | 12 of 1889. | To extend the powers of Magistrates in cases connected with the Revenue. |
| Proclamation | 13 of 1889. | To enable the Governor to introduce laws by Notification. |
| Proclamation | 2 of 1890. | To extend the right of appeal in criminal cases. |
| Proclamation | 3 of 1890. | To amend the law relating to criminal procedure. |
| Proclamation | 14 of 1890. | To amend section 375 of the Indian Penal Code. |
| Proclamation | 6 of 1891. | To restrict the amount of interest to be allowed upon judgment debts. |
| Proclamation | 3 of 1895. | To provide for the better administration of justice. |
| Proclamation | 11 of 1901. | To amend the criminal law. |
| Proclamation | 10 of 1902. | To provide that certain sentences of death be carried out by shooting. |
| Notification | 125 of 1893. | Adopting the Indian Limitation Act. |
| Notification | 137 of 1893. | Adopting the Indian Companies Act. |
| Notification | 143 of 1901. | Defining the Civil Courts of the Territory. |
| Notification | 223 of 1901. | Defining the powers given to judges. |
| Notification | 120 of 1902. | Regulating the payment of moneys into court. |

Schedule B.

[As amended by P. No. 5 of 1907, § 4 and N. 16 of 1911.]

The Penal Code (Act 45 of 1860).
 The Criminal Procedure Code (Act 5 of 1898).
 The Civil Procedure Code (Act 5 of 1908).
 The Evidence Act (1 of 1872).
 The Contract Act (9 of 1872).
 The Limitation Act (15 of 1877).
 The Specific Relief Act (1 of 1877).
 The Whipping Act (4 of 1909).
 The Breach of Contract Act (13 of 1859).
 The Probate and Administration Act (5 of 1881).
 The Indian Companies Act (6 of 1882).
 The Indian Oaths Act (10 of 1873).
 The Protection of Judicial Officers Act (18 of 1850).
 The Transfer of Property Act (4 of 1882).

All Acts amending any of the above that are for the time being law in British India.

Amendments.

The Penal Code. Those sections which provide an alternative sentence of transportation are amended by the omission of such sentence from the list of punishments. In those sections where no alternative to the sentence of transportation is provided, a sentence of fourteen years' rigorous imprisonment is substituted therefor. Section 497. The punishment shall be by fine only, not exceeding \$ 100 in amount.

The Criminal Procedure Code. Section 368. In cases where rebels against the Government are convicted of murder, the Governor may direct that the sentence of death shall be by shooting. Any such direction shall be in writing and shall, upon pronouncement of the verdict of the Court, be submitted to the Presiding Judge by the Public Prosecutor.

The Civil Procedure Code. Section 209. The interest payable upon judgment debts shall not exceed twelve per cent from the date of the decree of the Court¹).

Partnership and Companies.**a) P. No. 1 of 1883 (21st February, 1883).**

We do hereby direct and proclaim that so far as the same shall be applicable to the circumstances of this Territory and not repugnant to, nor inconsistent with, any Laws or Proclamations now in force in the said Territory, the provisions of the Ordinance of the Colony of Fiji numbered 7 of 1878, and entitled "*An Ordinance to consolidate and amend the Law of Partnership and to provide for the Constitution*"

¹) Certain modifications of the Indian Penal Code and the Indian Whipping Act were made by N. No. 17 of 1911.

of *Joint Stock Companies with Limited Liability*," are hereby adopted as the Law in such matters throughout the Territory of North Borneo, subject to the exceptions hereinafter notified.

And we do further direct and proclaim:

1. That the provisions of the clauses of the said Ordinance numbered 134 to 148, and 205 and 206, be excepted from the operation of this Proclamation.

[2. Is repealed by P. No. 12 of 1902, § 2.]

The full text of the Ordinance of Fiji herein referred to is published in the author's *Commercial Law of Fiji*, Vol. XVIII of this Work. The provisions of the Fiji ordinance are affected by the adoption of the *Indian Companies Act, 1882*, and the *Indian Contract Act, 1872*, by P. No. 17 of 1903, Sched. B., reprinted in full, *supra*.

b) P. No. 12 of 1902. A Proclamation to repeal Parts of the Fiji Ordinance of 1878 affecting Joint Stock Companies and Partnership Registration Fees (1st August, 1902).

1. This Proclamation shall be cited as the *Companies and Partnership Amendment Proclamation, 1902*, and shall come into force on the publication thereof in the *Gazette*.

2. The following sections of the Fiji Ordinance of 1878 and of Proclamation 1 of 1883 are hereby repealed:

| | |
|------------|----------------------------------|
| 29—38 | } of the Fiji Ordinance of 1878. |
| 169—210 | |
| Schedule B | |
| " C | |
| " D | |
| " E | |
| " F | } of Proclamation 1 of 1883. |
| " G | |

2 of Proclamation 1 of 1883.

3. For the purposes of the unrepealed portion of the Fiji Ordinance the Registrar of the Chief Court shall be deemed to be the Registrar General.

4. It shall be lawful for the Governor to make and when made rescind or vary rules from time to time for the effective working of the Ordinance, and for fixing a scale of fees to be levied thereunder. All rules made and scales of fees to be levied under this section shall be published in the *Gazette*. The scale of fees to be paid by companies is contained in N. No. 96 of 1894.

5. The scale of fees contained in Schedule A hereto shall be levied until varied under the preceding section.

Schedule.

Schedule A.

Fees to be charged by Registrar General under section 154.

| | |
|--|-------|
| Recording abstract of partnership | \$ 25 |
| Inspection of Register | \$ 2 |
| Certified copy of an abstract, including copying fee | \$ 5 |

c) N. No. 96 of 1894.

(This notification contains a table of fees to be paid by companies to the Registrar of Joint Stock Companies.)

d) N. No. 111 of 1894 (29th November, 1894).

The Registrar of the Chief Court, Sandakan, is hereby appointed Registrar of Joint Stock Companies under the *Indian Companies Act, 1882*.

The *Indian Companies Act, 1882* (No. 6 of 1882), and all Acts or laws amending, repealing, or revising the same, that may be in force for the time being in British India, were adopted as

the law of North Borneo to take effect on 1st January, 1894, by Notification No. 137 of 1893, issued under Proclamation No. 13 of 1889, enabling the Governor to introduce laws by Notification. Notification No. 137 of 1893 was repealed by P. No. 17 of 1903, but the Indian Companies Act (No. 6 of 1882,) and all Acts amending the same in force for the time being in British India, are adopted by P. No. 17 of 1903, Sched. B. The full text of the Acts of British India herein referred to is published in Baptista, *Commercial Law of the Empire of India*, in this Volume. Mortgages and debentures issued by any incorporated company and secured upon the stock or goods, chattels, and effects of such company do not require to be registered under the *Bills of Sale Proclamation, 1891*. — P. No. 11 of 1891, § 4. Nor does said Proclamation apply to shares or interests in the capital or property of incorporated or joint stock companies. — Ibid. § 5 (4).

Carriers by Water.

P. No. 5 of 1906. To provide for the due Control of Shipping (1st August, 1906).

Short title. 1. This Proclamation may be cited as *The Shipping Proclamation, 1906*.

Power to suspend commencement. 2. The commencement of the operation of any of its provisions may be suspended by the Governor by Notification in the *Gazette* for such period as he deems necessary.

Repeal. 3. Proclamations 3 of 1900, 13 of 1903, and 2 of 1904, and all Notifications thereunder, are repealed.

Interpretation. 4. "Ship" means any vessel used in navigation not propelled with oars, other than a vessel of war. "Launch" means any vessel propelled by machinery not exceeding ninety feet in length. "Ship-owner" means the registered owner of a ship or any share therein. "Master" means any person having charge or command of a ship for the purpose of a voyage. "Voyage" means the passage of a ship between any two recognized ports or for a distance exceeding twenty-four hours journey. "Engineer" includes engine-driver. "Seaman" means every person employed on board a ship for its service, except a master or engineer. "Machinery" includes boiler, battery, or tank. "Wages" includes emoluments. "Wreck" means jetsam, flotsam, and derelict, and includes goods as well as ship. "Salvage" means all expenses properly incurred for a salvage service. "Equipment" means everything necessary to the due and safe navigation of a ship and the protection of life on board. "Goods" means cargo, and property not entered in a ships manifest. "Valid certificate" means a current certificate issued hereunder, or by any British or foreign Government.

Delivery of goods. 11. The owner, master, or agent of a ship may, after arrival at any port, land, in compliance with the Customs and port regulations in force, any goods at the Customs Wharf, and in default of the owner or consignee thereof taking immediate delivery, may warehouse the same, at the cost of such owner or consignee, in a bonded warehouse.

Lien for freight or charges. 12. Any goods on which freight, warehouse, or other incidental charges are due, or which are in the personal possession or charge of a passenger whose fare is unpaid, shall be subject to a lien for the same and may be so held by such ship-owner, master, or agent.

Sale. 13. In default of such lien being discharged within ninety days of landing, or, in the case of perishable goods, within such shorter time as may be agreed upon between the Superintendent of Shipping and the ship-owner or agent, such goods may be sold by the Superintendent of Shipping by auction and the proceeds applied in payment of the following charges in the order named: a) Government dues; b) Expenses of sale; c) Warehousing; d) Freight; and the balance shall be paid to the owner or, in default of such appearing, deposited in the Treasury.

Limitation of ship-owner's liability. 14. No ship-owner shall be liable, without his actual default or privity, for any loss or damage to goods by reason of fire or of dishonest appropriation of any precious stone or metal not declared as such by the shipper thereof on shipment, nor for any loss or damage to person or property from any other reason whatever to an extent exceeding the following amounts: a) For death or injury to the person, \$ 125 per ton of registered tonnage; b) For loss or damage to property, \$ 70 per ton of registered tonnage.

Consolidation of suits. 15. Where any loss or damage has occurred to human life or goods on board any ship, and the ship-owner has received or apprehends various claims in respect of the same, he may apply to a competent Court to consolidate the same, and that Court may direct consolidation within a certain time, upon such notice as it deems requisite, to the exclusion of after claimants.

Carriers by Land.

P. No. 8 of 1902. A Proclamation to define the Law relating to Railways and to the Conveyance thereby of Passengers and Goods (16th April, 1902).

Liability for goods lost, destroyed, or injured. 15. The Government shall in no case be liable for loss or injury to any articles or goods to be carried by the railway, unless such loss or injury shall have been caused by negligence or misconduct on the part of their agents of¹⁾ servants, and unless the articles or goods in respect of which compensation is claimed shall have been booked and paid for in conformity with this Proclamation or the rules and regulations in that behalf provided.

The Railway Administration will not be accountable for any articles (other than passengers' luggage) unless the same be signed for as received by its clerks or agents; nor will it be responsible for loss or damage arising from the act of God, or civil commotion, or from fire unless due to the negligence of its servants or agents; nor for the loss of, or damage done to the goods put into returned wrappers or boxes, or packages described as empties; nor of any goods left until called for, or to order, or warehoused for the convenience of the parties to whom they belong, or by or to whom they are consigned; nor of any goods remaining on the railway premises beyond 48 hours after notice has been given to the consignees of their arrival; nor for the loss of, or damage to, any packages insufficiently or improperly packed, marked, directed, or described, or containing a variety of articles liable to damage each other or other articles; nor for leakage arising from bad casks or bad cooperage, or from fermentation; nor for loss or damage to any goods whatsoever, by reason of accidental or unavoidable delays in transit or otherwise. — N. No. 106 of 1909, § 1.

Remedy for non-payment of the carriage of goods; remedy for non-payment of freight and fare. 16. If any person shall fail to pay on demand any sum due or the conveyance of any goods, it shall be lawful for the Resident Engineer for Railways to detain all or any part of such goods, or if the same shall have been removed from the premises appertaining to the railway, any other goods of such person which shall then be on their premises, or shall thereafter come into their possession, and also, after reasonable notice to such person, to sell by public auction a sufficient quantity of such goods to realize the sum payable as aforesaid, and all charges and expenses of such detention and sale; and out of the proceeds of the sale to retain the sum so payable, together with the charges and expenses aforesaid, rendering the surplus, if any, of the money arising by such sale, and such of the goods as shall remain unsold, to the person entitled thereto; or the Resident Engineer for Railways may recover any such sum by action at law. The goods of passengers may also be detained and sold, and the proceeds disposed of as above provided for non-payment of the fare due by them.

Written account of goods to be given on demand. 17. The owner or person having the care of any goods which shall have been carried upon the railway, or shall be brought to the premises appertaining to the railway for the purpose of being carried on the railway, shall, on demand by any railway official, deliver to such official an exact account in writing, signed by him, of the number or quantity and description of such goods. This provision shall not apply to passengers' luggage.

Penalty for giving no account or false account. 18. If any such owner or person as aforesaid shall, on demand by any railway official, fail to give such account, or if he shall wilfully give a false account, he shall, for every such offence, be liable to a fine not exceeding \$ 20 for every ton of goods, and to a fine not exceeding \$ 10 for any quantity of goods less than a ton.

Carriage of goods of a dangerous nature. 19. No person shall carry upon the railway any dangerous article, or be entitled to require any railway official to carry upon the railway any article which, in the judgment of any railway official, shall

¹⁾ *Sic*; obviously "or."

be of a dangerous nature, or so bulky that it would be unsafe for the railway to convey the same, and if any person shall carry upon the railway any dangerous article, or shall deliver for carriage any such article, without distinctly declaring the nature of the same, he shall be liable to a fine not exceeding \$ 100 for every such offence; and it shall be lawful for any railway official to refuse to carry any luggage or parcel that may be suspected to contain articles of a dangerous nature, and to require the same to be opened; and in case any such luggage or parcel shall have been received by any railway official for the purpose of being carried on the railway, it shall be lawful for any railway official to stop the transit thereof, until he shall be satisfied as to the nature of the contents of the luggage or parcel.

Victoria Day.

P. No. 21 of 1903. A Proclamation to establish a Public Holiday on the twenty-fourth Day of May in every Year (27th November, 1903).

Short title. 1. This Proclamation may¹⁾ cited as *The Victoria Day Proclamation, 1903.*

Victoria Day established. 2. The twenty-fourth day of May in every year shall be observed and set apart as a public holiday throughout the State, and shall be designated Victoria Day: Provided that whenever the said day shall fall on a Sunday, the Monday following shall be so observed.

Proviso as to business obligations. 3. Such day shall be deemed to be a non-business day, and all obligations arising from business documents maturing, or acts legally due to be done, on that day, may be carried out with like effect on the first business day subsequent thereto.

Insolvency.

a) P. No. 4 of 1911. To amend the Law relating to Cases of Insolvency (1st June, 1911).

1. This Proclamation may be cited as *The Insolvency Proclamation, 1911.*

2. Proclamation 16 of 1903 is hereby repealed. a) Notification 99 of 1903 is hereby amended by the deletion of the words "Chapter XX of the Code of Civil Procedure, as amended by Proclamation No. XVI of 1903," and the substitution therefor of the words "The Insolvency Proclamation, 1911." b) Notification 10 of 1893 is hereby amended by the deletion of the words "Chapter XX of the Code of Civil Procedure," and the substitution therefor of the words "The Insolvency Proclamation, 1911."

3. Any person who is unable to pay his debts, whether a decree or execution of a decree has been issued against him or not, may apply in writing to be declared an insolvent. Any creditor (or combination of creditors) claiming a sum amounting to not less than \$ 100 may apply in writing that his debtor may be declared an insolvent. Every such application shall be made to the Sessions Court through the Magistrate within the local limits of whose jurisdiction the debtor resides or is in custody.

4. The application, when made by the debtor, shall set forth: a) His name, occupation, and place of residence; b) The amount, kind, and particulars of his property, and the value of any such property not consisting of money; c) The place or places in which such property is to be found; d) His willingness to put it at the disposal of the Court; e) The amount and particulars of all pecuniary claims against him; and f) The names and residences of his creditors, so far as they are known or can be ascertained by him. The application when made by a creditor shall set forth the amount due and the place where the debtor resides or is in custody.

5. The application shall be signed and verified by the applicant in manner prescribed in the Code of Civil Procedure Act V, 1908 for signing and verifying plaints.

¹⁾ Obviously "be" should be inserted.

6. The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be exhibited in Court and served at the applicant's expense: a) Where the applicant is the debtor — on the applying creditor or creditors, and on the other creditors (if any) mentioned in the application; b) Where the applicant is a creditor — on the debtor or his pleader.

7. The Court may, if it thinks fit, publish at the applicant's expense the application in the *Official Gazette*. Where the applicant is the debtor, the Court may exempt him from any payments under this section if satisfied that he is unable to make them. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant and applying for leave to be heard on the application.

8. Where the debtor is in custody under the provisions of the Code of Civil Procedure, the Court may, pending the hearing under section 9, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

9. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the applying creditor or creditors and other persons (if any) alleging themselves to be creditors, in opposition to the debtor's discharge; and may, if it thinks fit, grant time to the applying creditor or creditors or other persons to adduce evidence, showing that the debtor is not entitled to be declared an insolvent.

10. If the Court is satisfied: a) That the statements in the application are substantially true; b) That the debtor has not, with intent to defraud his creditors, concealed, transferred, or removed any part of his property since the application for the declaration of insolvency; c) That he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts or given an unfair preference to any of his creditors by any payment or disposition of his property; d) That he has not committed any other act of bad faith regarding the matter of the application: the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a receiver of his property, or if it does not appoint such receiver, may discharge the insolvent. If the Court is not so satisfied, it shall make an order rejecting the application.

11. The creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him: and the Court shall by order determine the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a schedule of such persons and debts: and the declaration under section 10 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts. A copy of every such schedule shall be exhibited in the courthouse. Nothing in this section shall be deemed to entitle a partner in an insolvent firm or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

12. Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved. Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor. In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections, if any, may comply with or reject the application.

13. Every order under section 10 shall be published in the *Official Gazette* and every order under that section appointing a receiver shall operate to vest in the receiver all the insolvent's property (except the particulars specified in the first

proviso to section 60 of the Code of Civil Procedure) whether set forth in his application or not.

14. The receiver so appointed shall give such security as the Court may direct and shall possess himself of all such property except as aforesaid; and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

15. The receiver shall proceed under the direction of the Court: a) To convert the property into money; b) To pay thereout debts, fines, and penalties (if any) due by the insolvent to Government; c) To pay the applying creditor's or creditors' costs; d) To discharge, according to their respective priorities, all debts secured by mortgage of the insolvent's property; e) To distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference; and such receiver may retain as a remuneration for the performance of his duties a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus, if any, to the insolvent or his legal representative: Provided, that, in any local area in which a declaration has been made under sections 68 to 71, both inclusive, of the Code of Civil Procedure and is in force, no sale of immoveable property paying revenue to Government or held or let for agricultural purposes shall be made by the receiver; but, after he has sold the other property of the insolvent, the Court shall ascertain: a) The amount required to satisfy the claims of the scheduled creditors after deducting the moneys already received; b) The immoveable property of the insolvent remaining unsold; and c) the incumbrances, if any, existing thereon, and shall forward a statement to the District Officer containing the particulars aforesaid; and thereupon the District Officer shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by Schedule 3, Rules I. to XIII., both inclusive, of the Code of Civil Procedure, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

16. An insolvent discharged under section 10 or 14 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 17) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 60 of the Code of Civil Procedure and except the property vested in the receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 10 or 14.

17. If the aggregate amount of the scheduled debts is two hundred dollars or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

18. Whenever, at the hearing under section 9, it is proved that the applicant has: a) Been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust; b) Fraudulently concealed, transferred, or removed any property; or c) Committed any other act of bad faith regarding the matter of the application; the Court shall, at the instance of any of his creditors, sentence him by order in writing to imprisonment for a term which may extend to one year from date of committal; or that Court may, if it think fit, send him to the Magistrate to be dealt with according to law.

19. The Local Government may, by notification in the *Official Gazette*, invest any Court other than the Sessions Court with powers as conferred on the Sessions Court by sections 3 to 18 (both inclusive), and the Sessions Judge may transfer to any such Court any case instituted under section 3. A Court so invested may entertain an application under section 3 by any person who has been arrested or imprisoned, or against whose property an order of attachment has been made, in execution of a decree for money passed by that Court.

b) N. No. 99 of 1903.

The Court of any Magistrate of the first class is hereby invested with powers to deal with insolvency applications under the Insolvency Proclamation, 1911.

V. Brunei.

Bibliography.

Collections of laws.

Enactments. Annual¹⁾. Singapore.

Introduction.

Brunei was placed under British protection in 1888, and under a Treaty of 2d January, 1906, the Sultan placed the general administration of the state in the hands of a British Resident.

Law in force.

By an Enactment of 1908 certain statutes of the Straits Settlements and the Federated Malay States were declared to be in force in Brunei so far as local circumstances admit²⁾.

Courts and procedure.

The judicial organization comprises the Court of the Resident, Magistrates' Courts, Courts of Native Magistrates, Courts of Kathis. The Court of the Resident consists of the British Resident has, in addition to general criminal jurisdiction, general jurisdiction in civil matters, and may try all suits by and against all persons and bodies corporate in all cases where the defendants are present in the State, or the corporate body has a place of business in the State, or where the defendant has property in the State, or if the subject matter of the suit is land or other property within the State, or where the contract in respect of which suit is brought was made or to be performed, or where there was a breach thereof within the State. The Court of the Resident also has appellate jurisdiction over all the lower Courts. The Court of a Magistrate has original civil jurisdiction in cases where the amount in dispute does not exceed \$ 1000, and appellate jurisdiction over the inferior Courts. The Court of a Native Magistrate has civil jurisdiction in suits brought by or against Malays or other Asiatics, where the value of the subject matter does not exceed \$ 25. The Court of a Kathi has jurisdiction in questions concerning Mohammedan religion, marriage, and divorce³⁾. An appeal lies from the Brunei Civil Courts to the Court of Appeal of the Straits Settlements, and thence to the Privy Council.

Statutes.⁴⁾

No. 1 of 1908. An Enactment to amend the Law relating to the Constitution and Powers of the Civil and Criminal Courts and the Law and Procedure to be administered in the State (31st March, 1908).

Colonial and Federated Malay States laws adopted. 25. The following laws with the necessary alterations to adapt them to the State shall, as far as local circum-

¹⁾ Up to 31st January, 1912, no Enactment had been passed in Brunei since E. No. 1 of 1909. — ²⁾ No. 1 of 1908, § 25, reprinted, *in/ra*. — ³⁾ E. No. 1 of 1908. — ⁴⁾ As in force 1st February, 1912.

stances admit, and subject to the provisions of this Enactment be the law of the State: i) The Penal Code in force for the time being in the Colony; ii) The law of evidence in force for the time being in the Colony; iii) The Criminal Procedure Code in force for the time being in the Colony; iv) The Civil Procedure Code in force for the time being in the Colony; v) The law of specific relief in force for the time being in the Federated Malay States; vi) The law of contracts in force for the time being in the Federated Malay States.

"Colony" means Straits Settlements. — E. No. 1 of 1908, § 2. By virtue of the above section the law relating to partnership and sale of goods is identical with that in the Federated Malay States, q. v.

VI. Sarawak.

Bibliography.

Collections of Orders.¹⁾

Sarawak Government Gazette. Fortnightly. Kuching.

Introduction.

In 1842 Sir James Brooke, a British subject, obtained from the Sultan of Brunei a grant of the government of a part of the present territory of Sarawak. Additional grants were secured in 1861, 1885, and 1890. In 1888 Sarawak was placed under British protection.

Law in force.

The law of England, except as modified by local Orders, is in force. Up to 16th March, 1912 no local Orders dealing with topics within the scope of the present work have been enacted.

¹⁾ The local laws have not been compiled.

Hongkong and Weihaiwei

I. Hongkong.

Introduction.

History and government.¹⁾

To the Greeks and Romans the land of Sinæ or Seres was almost a terra incognita. But when Genghis Khan and his successors extended the confines of the Mongol Empire to the very frontiers of Poland, and for a moment threatened the existence of Christendom itself the eyes of Western Europe were turned toward Cathay. Envoys from the great European courts, missionaries fired with zeal to convert to Christianity the pagan millions of the eastern empire, merchants lured by the hope of acquiring vast fortunes in trade resorted to the Mongol Empire. All travel was overland; no European ships reached Chinese waters until the first years of the sixteenth century²⁾. In 1557 Portuguese traders established themselves at Macao, and in 1654 a treaty was made between England and Portugal recognizing in favour of the traders of each nation the right of access to the ports of the East Indies. In 1613 the East India Company established a factory at Firando, in Japan, followed shortly by the establishment of branch agencies at Tywan, on the island of Formosa, and at Amoy. British trade at Canton began in 1655, and in 1702 the East India Company established a factory on the island of Chusan. In 1624 the Dutch obtained liberty to trade in certain parts of China, but they were driven out in 1662, and thereafter played no important role in the China trade. The Spaniards traded to some extent with the Chinese during the sixteenth and seventeenth centuries³⁾. In 1834 the monopoly of trade enjoyed by the East India Company ceased, and by an Act of Parliament⁴⁾ the China trade was opened to all British subjects. For the supervision of this trade superintendents were appointed, and a court of justice, with criminal and admiralty jurisdiction, established at Canton.

All foreign trade was merely tolerated by the Chinese government, and was subjected to vexatious contributions and humiliating conditions. The relations between England and China in respect of this trade grew more and more strained, and open hostilities broke out in 1839. As the result of this war the island of Hongkong was ceded to England by the treaty of Chuenpi (20th January, 1841), confirmed by the treaty of peace (26th August, 1841), and by the treaty of Nanking (29th August, 1842)⁵⁾. By the Convention of Peking (24th October, 1860) confirming the treaty of Tientsin (26th June, 1858) the promontory of Kowloon was ceded by China, and by Order in Council of 4th February, 1861⁶⁾, declared a part of the Colony of Hongkong. Additional territory on the mainland was acquired under a lease from China (9th June, 1898), and declared a part of the Colony by Order in Council of 20th October, 1898⁷⁾.

Hongkong was erected into a Colony by the charter of the 5th April, 1843, providing for a legislative council and an executive council, and conferring on the former "full power and authority to make and enact all such laws and ordinances as may from time to time be required for the peace, order, and good government of the said Colony." The legislative council assembled on the 11th January, 1844.

¹⁾ In addition to the works cited in the notes to this section, see Mayer and Dennys, *Treaty ports of China and Japan*, Tarrant, *Early history of Hongkong*, and the histories of China. —

²⁾ Lucas, *Historical geography of the British Colonies*, Vol. I, p. 133. — ³⁾ Ibid. p. 134; Eitel, *Europe in Asia, a history of Hongkong*, c. 1. — ⁴⁾ 3 & 4 Wm. 4, c. 93. — ⁵⁾ Norton-Kyshe, *History of the laws and courts of Hongkong*, Vol. 1, p. 15. By the treaty of Nanking it was provided that Hongkong was "to be governed by such laws and regulations as Her Majesty ... shall see fit to direct". — ⁶⁾ Stat. R. & O. Rev. 1904, Vol. 6, "Hongkong," p. 1. — ⁷⁾ Ibid. p. 5.

There was considerable delay in the opening of the Supreme Court. The Court was established by the Ordinance of the 23rd August, 1844, and was formally opened on 1st October, 1844.

The present government of the Colony is regulated by the Order in Council of 19th January, 1888¹⁾. The order provides for the appointment of a Governor and Commander-in-Chief²⁾ and an executive council³⁾. The legislative council, partly nominative and partly elective, is vested with the general power to make laws⁴⁾. The power to disallow local enactments⁵⁾ and to legislate by orders in council⁶⁾ is expressly reserved. The government of the New Territories is regulated by the Order in Council of 20th October, 1898, authorizing the Governor and Legislative Council of Hongkong to make laws for these territories⁷⁾.

Law in force.

Hongkong was acquired by cession, and consequently the law existing at the time of the cession remained in force until altered or repealed by the new sovereign. On 2d February, 1841, a proclamation was issued by Capt. Elliot that "pending Her Majesty's further pleasure the natives of the island of Hongkong and all natives of China thereto resorting shall be governed according to the laws and customs of China, every description of torture excepted," and that "all British subjects and foreigners residing in or resorting to the island of Hongkong shall enjoy full security and protection according to the principles and practice of British law"⁸⁾.

This guarantee of the maintenance of the Chinese law, even as to persons of that nationality, was found to be inexpedient⁹⁾, and by the Ordinance of 21st August, 1844¹⁰⁾, it was provided that "the law of England shall be in full force in the said Colony of Hongkong, except where the same shall be inapplicable to the local circumstances of the said Colony or of its inhabitants: Provided, nevertheless, that in all matters or questions touching the right to any real property in the said Colony, the law of England shall prevail, and that no law shall be recognized in the said Colony, which may in any way derogate from the sovereignty of the Queen of England." This provision was substantially re-enacted in the Ordinance of 19th August, 1845¹¹⁾. In the following year, however, an Ordinance was passed¹²⁾ limiting the law of England introduced into the Colony to that in force in England on the day when Hongkong obtained a local legislature (5th April, 1843), and this provision is now in force¹³⁾.

Where a rule of the common or statute law of England is in force in Hongkong by virtue of its adoption of these ordinances it is in force only in so far as it is applicable to local conditions, but where the legislative council re-enacts an English statute the provisions of the enactment govern, even though contrary to the customs and usages of the Colony at the time of its adoption¹⁴⁾. As to the binding force of English precedents, Chief Justice Piggott says¹⁵⁾: "English decisions must be followed in this Court if they are applicable to the circumstances which come before it." But "is the whole of the elaborate case law of England

1) Ibid. p. 2. — 2) Ibid. §§ 2—6. — 3) Ibid. § 7. — 4) Ibid. §§ 8, 9. An excellent discussion of the powers of the Colonial legislature is contained in *In re Yu Ki Shing*, (1908), 3 H. K. L. R. 20. See also *In re Chan Yue Shan, Ex parte Chan King Po*, (1908), 4 H. K. L. R. 128. — 5) Ibid. § 10. — 6) Ibid. § 11. — 7) Ibid. p. 5, § 2. The right of Chinese officials to govern the city of Kowloon was revoked by Order in Council of 27th December, 1899. — Ibid. p. 6. — 8) Norton-Kyshe, Vol. 1, pp. 4, 5. — 9) Ibid. p. 19. — 10) Ord. No. 15 of 1844, § 3. — 11) Ord. No. 6 of 1845. — 12) Ord. of 6th May, 1846 (No. 2 of 1846). — 13) Such of the laws of England as existed when the Colony obtained a local legislature, that is to say, on the 5th day of April, 1843, shall be in force in the Colony, except so far as the said laws are inapplicable to the local circumstances of the Colony or of its inhabitants. Such portions of the practice of the English Courts as existed on the said 5th day of April, 1843, shall be in force in the Colony, subject to the same exception as to their applicability as is contained in the last preceding section in relation to the laws of England, and except so far as such practice may be repealed or suspended by any Ordinance for the time being in force in the Colony relating to practice and procedure. — Ord. No. 3 of 1873, §§ 5, 6. Civil procedure is now regulated by Ordinance No. 3 of 1901. The provisions of the law bind all persons within the jurisdiction. Says Adams, acting Chief Justice: "Not only the subjects of the Queen of England, but foreigners also resident in this Island, where they receive the protection of the British law, must in return submit to the authority of that law". — *Regina v. Tam Achoy*, (1860), Norton Kyshe, Vol. 1, p. 637. — 14) *Li Po Kam v. Li Ling Shi*, (1908), 3 H. K. L. R. 170. — 15) *Lau Yeong Wood v. Standard Oil Co.*, (1908), 3 H. K. L. R. 53.

applicable to the circumstances of the Colony? English law is only in force here under the Charter in so far as it may be applicable, and when I come to a series of decisions, the keynote to which is the custom or practice of a certain class of people who enter into contracts in England, I hesitate to apply them as of necessity to the people in Hongkong. . . . That the principles of the English law of contract extend to Hongkong there is, of course, no doubt, and that decisions given in England since the Charter in so far as they expound those principles should be applied here is equally clear. But there the certainty of application ceases, and when, as I say, I find the intention of the parties expanded so far as to include customs and practice well understood in England, I am bound to pause and enquire whether those customs and practice are so well understood in this Colony."

The English law relating to the making, operation, transfer, and discharge of contracts is in force, so far as applicable to the circumstances of the Colony¹). Contracts of guarantee must be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized. But the writing need not set forth the consideration for the promise²). A surety discharging the liability of his principal is entitled to be subrogated to all of the rights of the creditor³). The contract of a *compradore* is ordinarily a contract of guarantee, and not a contract of insurance, and *semble*, would be subject to these provisions⁴). There is no provision against usury, but where no rate is fixed by the contract, and interest is stipulated for, the legal rate, eight per cent., applies⁵). Bills of sale must be registered in accordance with the provisions of the Bills of Sale Ordinance, 1886⁶).

Aliens are given the right to acquire, hold and dispose of lands and other immovable property on the same terms as British subjects⁷). The right of foreign companies to hold land is governed by an Ordinance of 1908⁸). The rights and liabilities of married women are governed by the Married Women's Property Ordinance, 1906⁹), as amended by The Married Women's Property Amendment Ordinance, 1907¹⁰).

Courts and procedure.

The Supreme Court consists of a Chief Justice and a Puisne Judge¹¹), is a court of record¹²), and has the jurisdiction of the English courts of Queen's Bench, Common

¹) Ord. No. 3 of 1873, § 5; *Lau Yeong Wood v. Standard Oil Co.*, (1908), 3 H. K. L. R. 53. As to liability of principal for the acts of agents, see *The Cheung Hing Firm v. The Wo On Sai Chan*, (1908), 3 H. K. L. R. 1. As to false representations by an infant as to his age, see *Li Leung v. Tam Mun Hing*, (1906), 2 H. K. L. R. 156. — ²) Ord. No. 1 of 1864, § 2. As to discharge of guarantor's liability by an alteration in the conditions of employment of the person whose acts form the subject of the guarantee contract, see *Leung Shiu Kong v. Imperial Bank of China*, (1909), 4 H. K. L. R. 242. — ³) *Ibid.* § 3. — ⁴) The real nature of the contract of the *compradore* has not been fully determined. — *Cp. Chan Ki v. David Sassoon & Co.*, (1908), 3 H. K. L. R. 40; *Russo-Chinese Bank v. Li Yau Sum*, (1908), 3 H. K. L. R. 119; *s. c. L. R.* (1910) A. C. 174; *David & Co. v. Chan Ut Chiu*, (1908), 4 H. K. L. R. 116. For a description of his duties, see *Commercial law affecting the Chinese*, p. 12, 13. — ⁵) Where interest is payable on any contract, express or implied, for payment of the legal or current rate of interest, or where on any debt or sum of money interest is payable by any rule of law, such rate of interest shall be recoverable as if this Ordinance had not been passed. Where interest is payable on any contract, express or implied, or on any debt or sum of money, but the rate of such interest is not fixed by the contract, or by the parties, or by rule of law, the rate thereof shall not exceed eight dollars per cent. per annum. Provided always that it shall be lawful for the Supreme Court and every other Court having jurisdiction within the Colony, in awarding interest in any action, suit, or matter, to allow a lower rate of interest, if the circumstances of the case render it just and expedient. — Ord. No. 5 of 1886, §§ 2, 3. — ⁶) Ord. No. 6 of 1886. — ⁷) Ord. No. 1 of 1853. Wills and other testamentary writings made by Chinese subjects, whether domiciled in Hongkong or in China, made or acknowledged and authenticated according to Chinese law or custom, are valid. — Ord. No. 1 of 1856, § 2. The property of Chinese dying intestate is also distributed according to Chinese law. — Ord. No. 1 of 1857, Schedule. As to proof of Chinese law relating to wills and succession, see Ord. No. 2 of 1897, § 60. — ⁸) Ord. No. 7 of 1908. — ⁹) Ord. No. 5 of 1906. This Ordinance adopts the provisions of the Imperial Married Women's Property Act, 1882, (45 & 46 Vic. c. 75), §§ 1—19, 23, as amended by The Married Women's Property Act, 1893, (56 & 57 Vic. c. 63), §§ 1—3. The Ordinance was made retroactive so as to commence on 1st January, 1883, but saving any rights duly acquired prior to the 15th June, 1906. — ¹⁰) Ord. No. 5 of 1907. — ¹¹) Ord. No. 3 of 1873, § 9. — ¹²) *Ibid.* § 3.

Pleas, Exchequer and Chancery, the powers of the Lord Chancellor in respect of infants and lunatics, and is a court of oyer and terminer and gaol delivery, assize, and nisi prius¹⁾, and a court of admiralty. Law and equity are administered concurrently²⁾. In the case of conflict the rules of equity prevail³⁾. All actions and other proceedings except appeals may in the first instance be heard before either of the two judges sitting alone, unless the Chief Justice directs that the same shall be heard before the Full Court⁴⁾. There is an appeal as of right from every decision of one of the judges sitting alone on the trial of any action or other proceeding (other than a criminal trial), and every appeal from such decision or from the decision of any magistrate is heard before the Full Court⁵⁾. Whenever in sittings of the Full Court there is a difference of opinion between the two judges, the Chief Justice has a double or casting vote⁶⁾.

The Supreme Court is also vested with summary jurisdiction at law in all actions where the claim, debt, or damages sought to be recovered does not exceed the sum of \$ 1000, and in all actions for the recovery of the possession of tenements where the annual rent or value thereof does not exceed that amount⁷⁾. Coverture, where the husband is not resident in the Colony, or infancy, is not a bar to the right to sue or the liability to be sued for debts or claims for damages not exceeding \$ 1000⁸⁾. Claims may not be divided so as to bring the amount within the summary jurisdiction of the Court, but the plaintiff may abandon the excess over \$ 1000 and sue on the summary side⁹⁾.

The Supreme Court also exercises summary jurisdiction in equity in certain cases¹⁰⁾. An appeal lies to the Full Court which may, if thinks fit, try the case *de novo*¹¹⁾.

A special Small Debts Court is provided for the New Territories, exclusive of New Kowloon. This Court is presided over by a magistrate, and exercises summary jurisdiction at law and in equity in all cases where the claim, debt, or damages sought to be recovered does not exceed the sum of \$ 200, and the defendant resides or carries on business in any part of the New Territories, exclusive of New Kowloon¹²⁾. No action or proceeding which might be brought in this Small Debts Court may be brought in the Supreme Court on its summary side, except by the leave of the magistrate, or with the consent of the defendant¹³⁾. No person is precluded from suing or exempted from being sued on account of infancy¹⁴⁾. Claims may not be divided in order to confer jurisdiction¹⁵⁾.

The Supreme Court is a court of appeal from the High Court of Weihaiwei¹⁶⁾, and has also certain criminal jurisdiction of offences committed by British subjects in Macao¹⁷⁾.

An appeal lies from a final judgment of the Supreme Court, rendered in the exercise of its local jurisdiction, or as a court of appeal from the High Court of Weihaiwei to the Privy Council, where the amount of the claim exceeds \$ 5000, or at the discretion of the Court, from any other judgment, whether final or interlocutory¹⁸⁾. Leave to appeal must be asked within fourteen days, and security in an amount not exceeding \$ 5000 furnished by the appellant within three months¹⁹⁾. Execution may be carried

1) *Ibid.* §§ 7, 8. — 2) *Ord.* No. 2 of 1901, § 3. — 3) *Ibid.* § 14. — 4) *Ord.* No. 3 of 1873, § 22. — 5) *Ibid.* § 23. — 6) *Ibid.* § 24. — 7) *Ord.* No. 4 of 1873, § 7. — 8) *Ibid.* § 9. — 9) *Ibid.* § 10. — 10) The summary jurisdiction in equity may be exercised in the following cases: 1. In all actions by creditors, legatees (whether specific, pecuniary, or residuary), devisees, or next of kin, in which the personal estate against or for an account or administration of which the demand is made does not exceed in amount or value the sum of \$ 1000; 2. in all actions for the execution of trusts, in which the trust estate or fund does not exceed in amount or value the sum of \$ 1000; 3. in all actions for foreclosure or redemption or for enforcing any charge or lien, where the mortgage, charge, or lien does not exceed in amount the sum of \$ 1000; 4. in all actions for the specific performance, or for the reforming, delivering up, or cancelling, of any agreement for the sale, purchase, or lease of any property, where, in the case of a sale or purchase, the purchase money, or, in the case of a lease, the value of the property, does not exceed the sum of \$ 1000; 5. in all actions for the dissolution or winding-up of any partnership, in which the whole property, stock, and credits of the partnership do not exceed in amount or value the sum of \$ 1000; and 6. in all proceedings for orders in the nature of injunctions, where the same are requisite for granting relief in any matter in which equitable jurisdiction is given to the Court. — *Ord.* No. 4 of 1873, § 12. — 11) *Ord.* No. 4 of 1873, §§ 34, 36–38.

12) *Ord.* No. 22 of 1908, § 2. — 13) *Ibid.* § 9. — 14) *Ibid.* § 4. — 15) *Ibid.* § 5. — 16) Weihaiwei Order in Council, 1901, *Stat. R. & O. Rev.* 1904, Vol. 5, "Foreign Jurisdiction," p. 283, § 80. — 17) China Order in Council, 1865, *Stat. R. & O. Rev.* 1904, Vol. 5, "Foreign Jurisdiction," p. 243. — 18) Where the case comes within the terms of the Order in Council, the right to appeal is absolute. — *Long Kee v. Ng Wai*, (1907), 2 H. K. L. R. 109. — 19) The time limit of three months can not be extended by a Colonial Court. — *Chau Wo v. Chau Yam*, (1908),

out or suspended, the respondent or appellant giving security, as the case may be¹).

Civil procedure is regulated by the Code of Civil Procedure²), based partly on the English and partly on the Indian practice. The Hongkong courts will not entertain suits between non-resident subjects of China in respect of causes of action originating out of the Colony³). A form of proceeding analogous to the old English arrest on mesne process is provided for in the Code of Civil Procedure. Where in any action, except in an action for the recovery of immoveable property, it appears that the defendant is about to leave the jurisdiction, or has disposed of or removed from the jurisdiction of the court his property or any part thereof, the plaintiff may cause the defendant to be arrested, either at the institution of the action or at any time thereafter prior to final judgment, unless the defendant furnishes security⁴). The procedure in admiralty is regulated by the Supreme Court (Admiralty Procedure) Ordinance, 1896⁵).

In regard to limitation of actions on merchants' accounts, and in other cases, the Mercantile Law Amendment Ordinance, 1864⁶), adopts the provisions contained in the Imperial Act of 1856⁷). Actions in the Supreme Court in the exercise of its summary jurisdiction must be commenced within three years next after the cause of action accrued, unless there has been some contract, acknowledgement, undertaking, or promise to pay in respect thereof by the party charged within three years before the commencement of the action⁸). The same rule applies to actions in the New Territories Small Debts Court⁹).

Bibliography.

I. Hongkong.

Collections of Ordinances.

Laws of Hongkong, 1841—1854. Hongkong. 1856.

Ordinances of Hongkong, 1844—1865. London. 1866.

Leach, Andrew John: Ordinances of the Legislative Council of the Colony of Hongkong, 1844—1887. Hongkong. 1890—1891.

Carrington, Sir John Worrell: Ordinances of Hongkong: a new and revised edition. Hongkong and London. 1902—1904¹⁰).

Wise, Alfred Gascoyne: Index to Ordinances of Hongkong. Hongkong. 1909.

Bowley, F. B. L.: Regulations of Hongkong. Hongkong. 1910.

Alexander, W. H.: Imperial statutes applicable in Hongkong. 1872.

Sessional ordinances. Annual. Hongkong.

3 H. K. L. R. 179. See now Order in Council, 10th August 1909, § 4(b), Stat. R. & O. 1909, p. 807.

¹) Order in Council, 10th August 1909, Stat. R. & O. 1909, p. 805. — ²) Ord. No. 3 of 1901. — ³) Neither the Supreme Court nor any other Court within the Colony shall have or exercise jurisdiction in any civil proceeding as between persons born within the dominions of the Emperor of China where the cause of action has originated out of the Colony, unless the defendant has been a resident therein for six consecutive months prior to the time of commencing any action, suit, or proceeding grounded on such cause of action. Provided always that, notwithstanding anything contained in this Ordinance, it shall be lawful for any such Court to have and exercise jurisdiction in any such civil proceeding if only it is made to appear, to the satisfaction of the presiding Judge of such Court, that such jurisdiction may be had and exercised without the mischief contemplated by this Ordinance. — Ord. No. 1 of 1851, § 2. As to the English practice in such cases, see *Jackson v. Spittall*, (1870), L. R. 5 C. P. 542; *Matthaei v. Galitzin*, (1873), L. R. 18 Eq. 340; *Logan v. Bank of Scotland*, (1906) 1 K. B. 141. See also Piggott, *Foreign Judgments*, Pt. I., p. 196, et seq. — ⁴) Ord. No. 3 of 1901, p. 566—571. Cp. Piggott, *Foreign Judgments*, Pt. I., p. 258, 259. — ⁵) Ord. No. 6 of 1896. — ⁶) Ord. No. 1 of 1864, §§ 4—8. — ⁷) 19 & 20 Vic. c. 97, §§ 9—11, 13, 14. — ⁸) Ord. No. 4 of 1873, § 8. — ⁹) Ord. No. 22 of 1908, § 3. — ¹⁰) Official edition within the Imperial Evidence (*Colonial Statutes*) Act, 1907, (7 Edw. 7, c. 16). — Ord. No. 16 of 1908. The text of the ordinances herein reprinted, and enacted prior to 1902, is based on this edition. The changes made by the Ords. Nos. 50, 51, 62, and 63 of 1911, and the *Statute Law Revision Ordinance, 1912*, are noted.

Reports of Cases.¹⁾

| Name of report. | No. of vols. | Period. | Method of citation. |
|--------------------------------------|--------------|-----------|---------------------|
| Hongkong Law Reports ²⁾ . | 4 | 1905—1909 | H. K. L. R. |

Works on Commercial Law.

Shepherd, Bruce: The Companies Ordinances of Hongkong, with introduction, notes and an index. Hongkong. 1891.

Commercial law affecting Chinese, with special reference to partnership registration and bankruptcy laws in Hongkong. (Reprinted from China Mail.) Hongkong. 1882.

II. Weihaiwei.

Collections of Ordinances.

Ordinances. Irregular. Port Edward.

Statutes.³⁾

Application of English Law.

No. 3 of 1873. An Ordinance to amend the Constitution of the Supreme Court of Judicature of the Colony (13th October, 1873).

Operation of laws of England in the Colony. 5. Such of the laws of England as existed when the Colony obtained a local legislature, that is to say, on the 5th day of April, 1843, shall be in force in the Colony except so far as the said laws are inapplicable to the local circumstances of the Colony or of its inhabitants and so far as they have been modified by laws passed by the said Legislature.

Operation of practice of English Courts in the Colony. 6. So much of the practice of the English Courts as existed on the said 5th of April, 1843, shall be in force in the Colony, subject to the same exceptions as are contained in the last preceding section in relation to the laws of England.

Partnership.

a) No. 1 of 1897. An Ordinance to codify the Law relating to Partnership (15th May, 1897).⁴⁾

Short title. 1. This Ordinance may be cited as the *Partnership Ordinance, 1897*.

Imp. § 50. This Ordinance originally constituted Ord. No. 2 of 1897. Ord. No. 7 of 1867 (an Ordinance to amend the law of partnership) was repealed by Ord. No. 2 of 1897, § 48.

Interpretation of terms. 2. In this Ordinance, unless the context otherwise requires: "The Court" includes every court and judge having jurisdiction in the case; "business" includes every trade, occupation, or profession.

Imp. § 45.

Nature of partnership.

Definition of partnership. 3. 1. Partnership is the relation which subsists between persons carrying on a business in common with a view of profit. 2. But the relation between members of any company or association which is: a) registered as a company under any Ordinance and relating to the registration of joint stock companies, or b) formed or incorporated by or in pursuance of any other Ordinance, or any Act of Parliament, or letters patent, or Royal Charter, is not a partnership within the meaning of this Ordinance.

Imp. § 3.

¹⁾ A few cases are reported in Norton-Kyshe, *History of the laws and courts of Hongkong*, in *The Gazette*, and in local newspapers. — ²⁾ Current series. — ³⁾ As in force 8th March, 1912. — ⁴⁾ The references (Imp.) are to the *Imperial Partnership Act, 1890*, (53 & 54 Vic. c. 39).

4. = Imp. § 2, except: in (d) "and" is added at the end of the subsection.
 5. = Imp. § 3, except: "last preceding" is substituted for "last foregoing."
 6. = Imp. § 4 (1). except: "Ordinance" is substituted for "Act."

Relations of partners to persons dealing with them.

7. = Imp. § 5.

Imp. § 5. Where a member of a partnership agrees to forbear bringing suit on behalf of his firm, and to cancel an indebtedness due the firm, in consideration of a third party promising to pay the amount of such debt he may, where the promise was made to him personally, sue on such promise without joinder of his partner. — *Agacio v. Forbes*, (1861), 14 Moo. P. C. 160, reversing the decision of the Supreme Court of Hongkong. Where money is borrowed by a partner in his own name, the mere fact that the money has found its way into the hands of the firm does not render the firm liable therefor, unless, *semble*, it can be definitely traced. — *Lau Man Cho v. Hongkong & Shanghai Banking Corporation*, (1908), 4 H. K. L. R. 20.

- 8—10. = Imp. §§ 6—8.

11. = Imp. § 9, except: "and in Scotland severally also" and "in England or Ireland" are omitted.

12. = Imp. § 10.

13. = Imp. § 11, except: "receives the money" is substituted for "receives money."

14. = Imp. § 12, except: "last two preceding" is substituted for "two last preceding."

- 15—19. = Imp. §§ 13—17.

20. = Imp. § 18, except: "or cautionary obligation" and "or obligation" are omitted.

Relations of partners to one another.

21. = Imp. § 19, except: "Ordinance" is substituted for "Act."

Imp. § 19. A stipulation that "any differences arising with reference to this agreement between the partners, their heirs or legal successors, will exclusively be submitted to the court of Hamburg," is valid, and ousts the jurisdiction of the Hongkong courts. — *Schwer v. von Uffel*, (1905), 1 H. K. L. R. 35. Deeds or other instruments of co-partnership are subject to a stamp duty of § 2. — Ord. No. 16 of 1901, Sched. I.

22. = Imp. § 20, except: in (1) "Ordinance" is substituted for "Act;" in (2) "or in Scotland the title to or interest in any heritable estate" is omitted, and "applicable thereto" is substituted for "thereto applicable;" in (3) "or in Scotland of any heritable estate" and throughout "or estate" are omitted, and "any agreement" is substituted for "an agreement."

23. = Imp. § 21.

24. = Imp. § 22, except: "heritable" and "or heritable" are omitted.

Procedure against partnership property for partner's separate judgment debt.

25. 1. After the commencement of this Ordinance, a writ of execution shall not issue against any partnership property except on a judgment against the firm.
 2. The Court, or a Judge thereof, may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may, by the same or a subsequent order, appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions, which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require. 3. The other partner or partners shall be at liberty at any time to redeem the interest charged, or, in case of a sale being directed, to purchase the same. 4. This section shall apply in the case of a cost-book company as if the company were a partnership within the meaning of this Ordinance.

Imp. § 23.

26. = Imp. § 24, except: in (3) "purposes" is substituted for "purpose" and "eight per cent" for "five per cent;" in (8) "and" is added at the end of the subsection; in (9) "if there are more places than one" is substituted for "if there is more than one."

27. = Imp. § 25.

28. = Imp. § 26, except: in (1) "to do so" is substituted for "so to do."

- 29—32. = Imp. §§ 27—30.

33. = Imp. § 31 except: in (1) "share of the profits" is substituted for "share of profits;" in (2) "in the case" is substituted for "in case."

Dissolution of partnership and its consequences.

34. = Imp. § 32, except: in (1) "or" is inserted after "that term" and before "if entered into for an undefined time."

35. = Imp. § 33, except: In (2) "Ordinance" is substituted for "Act."

Imp. § 33. The provisions of this section apply to Chinese partnerships, even though under the laws or customs of China a partnership is not dissolved by the death of a partner. "If this were an English statute introduced into the Colony at the time of the Charter, and to be applied in so far as local circumstances permit, there would be much force in the argument (against dissolution by death), assuming the Chinese custom to be as alleged." — Li Po Kam v. Li Ling Shi, (1908), 3 H. K. L. R. 170.

36. = Imp. § 34.

Imp. § 34. As to appointment of receiver, see *Yee Yan Wo v. Yee Wo Hang*, (1908), 3 H. K. L. R. 16.

37. = Imp. § 35, except: in (a) "or in Scotland by cognition" is omitted; in (e) "and" is added at the end of the subsection.

38. = Imp. § 36 except: subsection (2) reads as follows: "An advertisement in *The Gazette* as to a firm whose principal place of business is in the Colony shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised."

39—43. = Imp. §§ 37—41.

44. = Imp. § 42, except: in (1) "eight per cent" is substituted for "five per cent;" in (2) "preceding provisions" is substituted for "foregoing provisions."

Imp. § 42. See *Li Po Kam v. Li Ling Shi*, (1908), 3 H. K. L. R. 170.

45. = Imp. § 43.

46. = Imp. § 44, except: "and" is inserted at the end of (a) and of (b) (3).

47. = Imp. § 46, except: "Ordinance" is substituted for "Act."

b) No. 53 of 1911. An Ordinance to provide for the Registration of Chinese Partnerships, and to enable Partners therein to register and thereby to limit their Liability (1st December, 1911).¹⁾

Short title and application. 1. This Ordinance may be cited as the *Chinese Partnerships Ordinance, 1911*, and shall apply only to such partnerships carrying on business in the Colony as in the opinion of the Registrar of Companies can properly be described as Chinese partnerships.

Interpretations of terms. 2. In the construction of this Ordinance the following words and expressions shall have the meanings respectively assigned to them in this section, unless there be something in the subject or context repugnant to such construction: "Firm," "firm name," and "business" have the same meanings as in the *Partnership Ordinance, 1897*. "Registered partner" shall mean any partner including a firm, a family *t'ong* or a body corporate who or which is registered as such under this Ordinance. "Registrar of Companies" shall mean the officer appointed for the registration of companies under the *Companies Ordinance, 1865*, or any Ordinance amending or substituted for the same. "The Court" shall mean the Supreme Court. "Full name" shall, in the case of a person who carries on business in more than one name, include all the names, whether *t'ong* names or otherwise, in which such person carries on business, and in the case of persons with Chinese names or of Chinese origin shall include his surname and *pit tsz* (別字) and the places of his birth and the district in China to which he belongs. "*Hung ku* shareholder" means a person who is registered as such in a registered partnership and who holds a *hung ku* (紅股) or red share, and is a person who is entitled to no interest on capital but who shares with the partners the surplus profit after interest on capital has been paid.

Registration of Chinese partnerships and partners. 3. From and after the commencement of this Ordinance Chinese partnerships and partners therein may register in the manner and subject to the conditions by this Ordinance provided.

¹⁾ For a brief statement of the history and provisions of this Ordinance, see Huberich, *Die Hongkong-Partnership-Ordnung von 1911*, in *Monatsschrift für Handelsrecht und Bankwesen*, Vol. 21, pp. 118—121.

Conditions of registration. 4. 1. No partnership may register under this Ordinance unless one at least of its partners registers as a partner therein. 2. Firms or family t'ongs may be registered as partners in a registered partnership, provided that a firm or family t'ong so registered shall be regarded, so far as the partnership in which it is registered is concerned, as one person, and provided also that one partner only in the firm or one member only of the t'ong shall be registered as a representative of the firm or t'ong so registering as aforesaid, and provided also that no person may be registered as a representative of a firm or t'ong unless the Registrar of Companies is satisfied that he has the authority of the other members of his firm or the adult members of his t'ong to be registered as their representative in the registered partnership, and unless one month shall have elapsed since an announcement of his intention to apply for registration as a representative of the firm or t'ong in question shall have been published in the *Gazette* and in two Chinese daily newspapers circulating in the Colony. 3. The Registrar of Companies shall register the names of all members of a family t'ong disclosed to him by such representative, including infants of any age; and thereafter members so registered shall have their liability limited in the same manner as if they were registered as partners under this Ordinance. 4. Bodies corporate may be registered as partners in a registered partnership.

Effect of registration on liability. 5. 1. The liability of each partner in a registered partnership, which may sue and be sued in its registered name, shall be unlimited in respect of assets in his possession connected with the registered partnership. 2. The liability of each unregistered partner in a registered partnership shall be unlimited. 3. The liability of each registered partner in a registered partnership beyond his liability under sub-section 1 of this section, shall be limited to such proportion of the debts and obligations of the registered partnership as his interest in the registered partnership bears to the total interest of all the partners therein, whether registered or unregistered. 4. Where a firm or family t'ong is registered as a registered partner in a registered partnership, but is not itself registered as a registered partnership the liability of each of its partners or members shall be unlimited in respect of assets in his possession connected with the registered partnership, but his further liability shall be limited to such proportion of the debts and obligations of the registered partnership as the interest of his firm or t'ong in the registered partnership bears to the total interest of all the partners therein whether registered or unregistered. 5. Where a firm or family t'ong is registered as a registered partner in a registered partnership and is itself also registered as a registered partnership, the liability of each of its registered partners or members shall be unlimited in respect of assets in his possession connected with the registered partnership in which his firm or t'ong is a registered partner; but his further liability shall be limited to such proportion of what would have been his total liability if his firm or t'ong had not itself been a registered partnership as his interest in his own firm or t'ong bears to the total interest of all the partners therein, whether registered or unregistered. 6. Where a firm or family t'ong is registered as a registered partner in a registered partnership and is itself also registered as a registered partnership the liability of each of its unregistered partners or members shall be unlimited in respect of assets in his possession connected with the registered partnership in which the firm or t'ong is a registered partner; but his further liability shall be limited to such proportion of the debts and obligations of the registered partnership as the interest of his firm or t'ong in the registered partnership bears to the total interest of all the partners therein whether registered or unregistered. 7. No person registered only as a hung kú shareholder shall be under any further liability for the debts and obligations of the firm in which he is so registered than the liability imposed by sub-section 1 of this section. 8. The burden of proving that assets in his possession are unconnected with the registered partnership shall be on the person who seeks to have his liability limited under this section. 9. No member of a firm or family t'ong which is registered as a partner other than the registered representative thereof shall take part in the management of the business of the registered partnership or shall have power to bind the registered partnership. Provided that any member of such a firm or t'ong may by himself or his agent at any time inspect the books of the firm and examine into the state and prospects of the partnership business. If a member of such a firm or t'ong other than the registered representative thereof takes part in the management of the business of the registered partnership he shall be personally liable to an unlimited extent for all debts and obligations of the registered partnership incurred while he so takes

part in the management thereof. 10. A firm or family t'ong registered as a partner in a registered partnership may be sued in its firm or t'ong name in respect of the debts and obligations of the registered partnership, and service on its registered representative shall be deemed sufficient service on the partners in the firm or the members of the t'ong.

Dissolution and winding up of registered partnerships. 6. 1. A registered partnership shall not be dissolved by the death, or bankruptcy, or admission, or succession, or retirement of a partner; and the lunacy of a partner shall not be a ground for dissolution of the partnership by the Court unless the lunatic's share cannot be otherwise ascertained and realised. 2. In the event of the dissolution of a registered partnership its affairs shall be wound up by the partners unless the Court otherwise orders. 3. Applications to the Court to wind up a registered partnership shall be by petition under the *Companies Ordinance, 1865*, or any Ordinance amending or substituted for the same, and the provisions of such Ordinance relating to the winding-up of companies by the Court and of the rules made thereunder (including provisions as to fees) shall, subject to such modification (if any) as the Governor-in-Council may by rules provide, apply to the winding-up by the Court of registered partnerships, with the substitution of partners for directors. 4. Subject to any express agreement between the partners: a) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; b) A partner shall not be entitled to dissolve a registered partnership by notice.

Law as to private partnership to apply where not inconsistent with this Ordinance. 7. Subject to the provisions of this Ordinance, the *Partnership Ordinance, 1897*, and the rules of equity and of common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the last mentioned Ordinance, shall apply to partnerships and partners registered under this Ordinance.

Manner and particulars of registration. 8. The registration of a partnership under this Ordinance shall be effected by delivering to the Registrar of Companies a statement signed by such of the partners and hung kú shareholders as desire to be registered under this Ordinance containing the following particulars: a) The partnership name; b) The general nature of the business; c) The principal place of business; d) The full name and address of each of the partners and hung kú shareholders who desires to be registered under this Ordinance; e) The term, if any, for which the partnership is entered into, and the date of its commencement; f) The total capital of the partnership and the amount of such capital which has been paid up; g) The sum contributed by each partner who desires to be registered under this Ordinance, and whether paid in cash or how otherwise; h) The proportion which the interest in the partnership of each partner who desires to be registered under this Ordinance bears to the interests of all the partners, whether registered or unregistered, in the partnership; i) The interest in the firm of any hung kú shareholder who desires to be registered as such under this Ordinance.

Registration of changes in partnerships. 9. 1. If during the continuance of a registered partnership any change is made or occurs, whether by reason of the death of a registered or unregistered partner or otherwise howsoever, in: a) The firm name; b) The general nature of the business; c) The principal place of business; d) The registered partners or the name of any registered partner; e) The term or character of the partnership; f) The sum contributed by any registered partner; g) The proportion which the interest in the partnership of any registered partner bears to the interests of all the partners, whether registered or unregistered, in the partnership; a statement, chopped with the chop of the partnership and signed by the manager or in his absence by one or more of the registered partners, specifying the nature of the change shall within fourteen days be delivered to the Registrar of Companies. 2. If default is made in compliance with the requirements of this section such manager and all the registered partners who cannot prove that they were ignorant of the change, shall on summary conviction before a Magistrate, be liable to a fine not exceeding ten dollars for each day during which the default continues. Provided that no person shall be liable to pay a fine exceeding a total sum of five hundred dollars.

Ad valorem stamp duty on contributions by registered partners. 10. The statement of the amount contributed by a registered partner, and a statement of any increase in that amount, sent to the Registrar for registration under this Ordinance,

shall be charged with an ad valorem stamp duty of \$ 1 for every \$ 500 or portion of every \$ 500 up to \$ 10,000, and \$ 1 for every \$ 1,000 or portion of \$ 1,000 on the next \$ 15,000 and 50 cents for every \$ 1,000 or portion of \$ 1,000 or sums above \$ 25,000 of the amount so contributed, or of the increase of that amount, as the case may be; and, in default of payment of stamp duty thereon as herein required, the duty with interest thereon at the rate of eight per cent. per annum from the date of delivery of such statement shall be a debt to the Crown and shall be recoverable by the Colonial Treasurer from such registered partner in the same manner as is provided for by the *Crown Remedies Ordinance, 1875*, in respect of rent due to the Crown.

Penalty for making false returns. 11. Every one who makes, signs, sends, or delivers for the purpose of registration under this Ordinance any false or incomplete statement known by him to be false or incomplete commits a misdemeanour and shall also be personally liable to an unlimited extent for all debts and obligations of the registered partnership incurred during his partnership therein.

Registrar to file statement and issue certificate of registration. 12. On receiving any statement made in pursuance of this Ordinance the Registrar of Companies shall cause the same to be filed, and he shall send by registered post or deliver to the partnership from which such statement has been received a certificate of the registration thereof.

Registrar to keep register and index and to advertise registrations. 13. The Registrar of Companies shall keep at his office, in proper books to be provided for the purpose, a register and an index of all the partnerships registered as aforesaid, and of all the statements registered in relation to such partnerships, and shall as soon as practicable after each registration publish in the *Gazette* and in one Chinese newspaper circulating in the Colony a notification of the name of the registered partnership and of the name of every registered partner therein.

Inspection of statements registered. 14. 1. Any person may inspect the statements filed under this Ordinance by the Registrar of Companies, and there shall be paid for each such inspection a fee of one dollar; and any person may require a certificate of the registration of a registered partnership, or a copy of or extract from any registered statement, to be certified by the Registrar of Companies, and there shall be paid for such certificate of registration, certified copy, or extract such fees as the Governor-in-Council may appoint, not exceeding \$ 1 for the certificate of registration, and not exceeding forty cents for each folio of seventy-two words. 2. A certificate of registration, or a copy of or extract from any statement registered under this Ordinance, if duly certified to be a true copy under the hand of the Registrar of Companies or one of the Deputy Registrars (whom it shall not be necessary to prove to be the Registrar or Deputy Registrar) shall, in all legal proceedings, civil or criminal and in all cases whatsoever, be received in evidence.

Powers of Governor-in-Council to make rules. 15. The Governor-in-Council may make rules concerning any of the following matters: a) The fees to be paid to the Registrar of Companies under this Ordinance so that they do not exceed in the case of the original registration of a limited partnership the sum of twenty dollars and in any other case the sum of three dollars; b) The duties or additional duties to be performed by the Registrar of Companies for the purposes of this Ordinance; c) The performance by Deputy Registrars and other officers of acts by this Ordinance required to be done by the Registrar of Companies; d) The forms to be used for the purposes of this Ordinance; e) The publication from time to time in the *Gazette* of a list of the partnerships registered under this Ordinance; f) Generally the conduct and regulation of registration under this Ordinance and any matters incidental thereto.

Effect of registration not retrospective. 16. Nothing in this Ordinance shall be taken to effect any debt or liability incurred by a registered partnership or a registered partner or hung kú shareholder prior to the date of the certificate of their respective registrations issued under section 12.

Commencement of Ordinance. 17. This Ordinance shall come into operation on the first day of January, 1912.

Companies.

a) No. 58 of 1911. An Ordinance to consolidate and amend the Law relating to Companies (8th December, 1911).¹⁾

Short title. Application. Powers of the Court. 1. 1. This Ordinance may be cited as the *Companies Ordinance, 1911*. 2. This Ordinance applies to every company registered in this Colony either before or after the commencement of this Ordinance and notwithstanding that the whole or part of its business is or may be carried on elsewhere. 3. The Court shall not, in dealing with or making orders in respect of applications made to it under this Ordinance, take into consideration the fact that it may be difficult or impossible to enforce them.

Part I. Constitution and Incorporation.

Prohibition of large partnerships.

Prohibition of partnerships exceeding certain number. 2. No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on the business of banking or any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Ordinance, or is formed under or in pursuance of some other Ordinance, or Act, or of a charter of incorporation, or of letters patent.

Imp. § 1.

Memorandum of association.

Mode of forming incorporated company. 3. Any seven or more persons, (or, where the company to be formed will be a private company within the meaning of this Ordinance, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Ordinance in respect of registration, form an incorporated company, with or without limited liability (that is to say), either: i) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Ordinance termed a company limited by shares); or ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Ordinance termed a company limited by guarantee); or iii) A company not having any limit on the liability of its members (in this Ordinance termed an unlimited company).

Imp. § 2.

Memorandum of company limited by shares. 4. In the case of a company limited by shares: 1. The memorandum must state: i) The name of the company, with "Limited" as the last word in its name; ii) The address in the Colony at which the registered office of the company is to be situate; iii) The objects of the company; iv) That the liability of the members is limited; v) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount. 2. No subscriber of the memorandum may take less than one share. 3. Each subscriber must write opposite to his name the number of shares he takes.

Imp. § 3.

Memorandum of company limited by guarantee. 5. In the case of a company limited by guarantee: 1. The memorandum must state: i) The name of the company, with "Limited" as the last word in its name; ii) The address in the Colony at which the registered office of the company is to be situate; iii) The objects of the company; iv) That the liability of the members is limited; v) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified

¹⁾ The references (Imp.) in the notes are to the *Imperial Companies (Consolidation) Act, 1908*, (8 Edw. 7, c. 69).

amount. 2. If the company has a share capital: i) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount; ii) No subscriber of the memorandum may take less than one share; iii) Each subscriber must write opposite to his name the number of shares he takes.

Imp. § 4.

Memorandum of unlimited company. 6. In the case of an unlimited company: 1. The memorandum must state: i) The name of the company; ii) The address in the Colony at which the registered office of the company is to be situate; iii) The objects of the company. 2. If the company has a share capital: i) No subscriber of the memorandum may take less than one share; ii) Each subscriber must write opposite to his name the number of shares he takes.

Imp. § 5.

Stamp and signature of memorandum. 7. The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature.

Imp. § 6.

Restriction on alteration of memorandum. 8. A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Ordinance.

Imp. § 7.

Name of company and change of name. 9. 1. A company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires. 2. If a company, through inadvertence or otherwise, is without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the Registrar, change its name. 3. Any company may, by special resolution and with approval of the Governor signified in writing, change its name. 4. Where a company changes its name, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. 5. The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against by its new name.

Imp. § 8.

Alteration of objects of company. 10. 1. Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it: a) To carry on its business more economically or more efficiently; or b) To attain its main purpose by new or improved means; or c) To enlarge or change the local area of its operations; or d) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or e) To restrict or abandon any of the objects specified in the memorandum. 2. The alteration shall not take effect until and except in so far as it is confirmed on petition by the Court. 3. Before confirming the alteration the Court must be satisfied: a) That sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be effected by the alteration; and b) That, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court: Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section. 4. The Court may make an order confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper. 5. The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the

creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase. 6. An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within twenty-eight days from the date of the order, be delivered by the company to the Registrar of Companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company. The Court may by order at any time extend the time for the delivery of documents to the Registrar under this section for such period as the Court may think proper. 7. If a company makes default in delivering to the Registrar of Companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding one hundred dollars for every day during which it is in default.

Imp. § 9.

Articles of association.

Registration of articles. 11. 1. There may, in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company. 2. Articles of association may adopt all or any of the regulations contained in Table A in the first Schedule to this Ordinance. 3. In the case of an unlimited company or a company limited by guarantee the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered. 4. In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

Imp. § 10.

Application of Table A. 12. In the case of a company limited by shares and registered after the commencement of this Ordinance, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the first Schedule to this Ordinance, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Imp. § 11.

Form, stamp, and signature of articles. 13. Articles must: a) Be printed; b) Be divided into paragraphs numbered consecutively; c) Bear the same stamp as if they were contained in a deed; and d) Be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

Imp. § 12.

Alteration of articles by special resolution. 14. Subject to the provisions of this Ordinance and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

Imp. § 13.

General provisions.

Effect of memorandum and articles. 15. 1. The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member, his heirs, executors, and administrators, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Ordinance. 2. All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and shall be of the nature of a specialty debt.

Imp. § 14.

Registration of memorandum and articles. 16. The memorandum and the articles (if any) shall be delivered to the Registrar of Companies, and he shall retain and register them.

Imp. § 15.

Effect of registration. 17. 1. On the registration of the memorandum of a company the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited. **2.** From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Ordinance.

Imp. § 16.

Conclusiveness of certificate of incorporation. 18. 1. A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Ordinance in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Ordinance. **2.** A statutory declaration by a solicitor engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

Imp. § 17.

Copies of memorandum and articles to be given to members. 19. 1. Every company shall send to every member, at his request, and on payment of one dollar or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any). **2.** If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding ten dollars.

Imp. § 18.

Associations not for profit.

Restriction on charitable and other companies holding land. 20. A company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by its individual members shall not, without the licence of the Governor, hold more than two acres of land; but the Governor may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as he may think fit.

Imp. § 19.

Power to dispense with "Limited" in name of charitable and other companies. 21. 1. Where it is proved to the satisfaction of the Governor that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Governor may by licence direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly. **2.** A licence by the Governor under this section may be granted on such conditions and subject to such regulations as the Governor may think fit, and those conditions and regulations shall be binding on the association, and shall if the Governor so direct, be inserted in the memorandum and articles or in one of those documents. **3.** The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members and directors and managers to the Registrar of Companies. **4.** A licence under this section may at any time be revoked by the Governor, and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section: Provided that before a licence is so revoked the Governor

shall give to the association notice in writing of his intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

Imp. § 20.

Companies limited by guarantee.

Provisions as to companies limited by guarantee. 22. 1. In the case of a company limited by guarantee and not having a share capital, and registered on or after the date of the coming into operation of this Ordinance, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void. 2. For the purpose of the provisions of this Ordinance relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered on or after the date of the coming into operation of this Ordinance, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount of number of the shares or interests is not specified thereby.

Imp. § 21.

Part II. Distribution and Reduction of Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.

Distribution of share capital.

Nature of shares. 23. 1. The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate. 2. Each share in a company having a share capital shall be distinguished by its appropriate number.

Imp. § 22.

Certificate of shares or stock. 24. A certificate under the common seal of the company, specifying any shares or stock held by any member, shall be prima facie evidence of the title of the member to the shares or stock.

Imp. § 23.

Definition of member. 25. 1. The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members. 2. Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Imp. § 24. As to ownership and transfer of shares and debentures of any company by a married woman, the *Married Women's Property Ordinance, 1906*, (No. 5 of 1906), §§ 10-14, adopts the provision of the Imperial *Married Women's Property Act, 1882*, (45 & 46 Vic. c. 75), §§ 6-10. A person signing a transfer in blank and delivering a share certificate in that condition to a transferee, thereby effectually transfers his interest, and the document may pass from hand to hand until it comes into the possession of a holder who thinks fit to insert his own name as transferee, and to present the document to the company for the purpose of having his own name registered as owner of the shares represented by the certificate. The signing of a transfer in blank by the registered owner of the shares accompanied by delivery of possession, may constitute a good gift inter vivos. — *To Kai v. Smith*, (1908), 3 H. K. L. R. 147 (distinguishing *Milroy v. Lord*, (1862), 4 De G. F. & J. 264).

Register of members. 26. 1. Every company shall keep in one or more books a register of its members, and enter therein the following particulars: i) The names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member; in the case of Chinese members their names and addresses, and occupations, if any, shall be given in Chinese characters; ii) The date at which each person was entered in the register as a member; iii) The date at which any person ceased to be a member. 2. If a company fails to comply with this section it shall be liable to a fine not exceeding fifty dollars for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Imp. § 25.

Annual list of members and summary. 27. 1. Every company having a share capital shall once at least in every year make a list of all persons who, on the day of the ordinary annual general meeting in the year, are members of the company, and

of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company. 2. The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and in the case of Chinese members their names and addresses, and occupations, if any, in Chinese characters, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars: a) The amount of the share capital of the company and the number of the shares into which it is divided; b) The number of shares taken from the commencement of the company up to the date of the return; c) The amount called up on each share; d) The total amount of calls received; e) The total amount of calls unpaid; f) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return; g) The total number of shares forfeited; h) The total amount of shares or stock for which share warrants are outstanding at the date of the return; i) The total amount of share warrants issued and surrendered respectively since the date of the last return; k) The number of shares or amount of stock comprised in each share warrant; l) The names and addresses of the persons who at the date of the return are directors of the company, or occupy the position of directors, by whatever name called; m) The total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the Registrar of Companies under this Ordinance; n) In the case of a company which has a local register licence under section 35 of this Ordinance the number of shares on such local register and their distinguishing numbers or marks if any. 3. The summary must also (except where the company is a private company) include a statement, made up to the same date as the profit and loss account and balance sheet referred to in section 77, in the form of a balance sheet, audited by the company's auditors, and containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of those liabilities and assets, and how the values of the fixed assets have been arrived at. Such summary shall also include a statement of profit and loss. 4. The above list and summary must be contained in a separate part of the register of members, and must be completed within thirty-one days after the ordinary annual general meeting aforesaid, and the company must forthwith forward to the Registrar of Companies a copy signed by the manager or by the secretary of the company. 5. If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding fifty dollars for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Imp. § 26.

Trusts not to be entered on register. 28. No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar.

Imp. § 27.

Registration of transfer at request of transferor. 29. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Imp. § 28.

Transfer by personal representative. 30. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

Imp. § 29.

Inspection of register of members. 31. 1. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Ordinance, shall during business hours (subject to such reasonable restrictions as the

company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of the Registrar of Companies or of any member without fee, and to the inspection of any other person on payment of fifty cents, or such less sum as the company may prescribe for each inspection. 2. Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Ordinance, or any part thereof, on payment of twenty-five cents or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied. 3. If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding twenty dollars, and to a further fine not exceeding twenty dollars for every day during which the refusal continues, and every director and manager of the company who knowingly authorises or permits the refusal shall be liable to the like penalty; and, any Judge of the Court, may by order compel an immediate inspection of the register. 4. If such inspection or copy cannot be obtained at the registered office of the company with the exercise of a reasonable amount of diligence the company shall be liable to the same penalties as if such inspection or copy had been actually refused.

Imp. § 30.

Power to close register. 32. A company may, on giving notice by advertisement in some newspaper circulating in the Colony, and in the case of a company with a local register also in some newspaper circulating in the place where the local register is kept, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Imp. § 31.

Power of Court to rectify register. 33. 1. If: a) The name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or b) Default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member; the person aggrieved or any member of the company, or the company, may apply to the Court for rectification of the register. 2. The application may be made by motion in the Court, or by application to a Judge of the Court sitting in chambers, or in such other manner as the Court may direct; and the Court may either refuse the application, or may order rectification of the register, and payment by the company of any damages sustained by any party aggrieved. 3. On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register. 4. In the case of a company required by this Ordinance to send a list of its members to the Registrar of Companies, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

Imp. § 32.

Register to be evidence. 34. The register of members shall be prima facie evidence of any matters by this Ordinance directed or authorised to be inserted therein.

Imp. § 33.

Registrar may license companies to keep local registers. 35. 1. The Registrar of Companies may subject to instruction from the Governor issue an annual licence, available for the period of one year, to any company whose objects comprise the transaction of business outside the Colony, empowering such company, if it is authorized so to do by its regulations as originally framed or as altered by special resolution, to keep in any place in which it transacts business a register or Registers of members: Provided that a company applying for such licence must satisfy the registrar by a statutory declaration to be filed with him that a principal part of the business of the company is carried on at or near the place where it desires to keep such register. Every such licence shall be valid only until the thirty-first day of December next following the date on which it is issued: Provided always that where the period between the date of the issue of a licence and the thirty-first day of December next following is less than a year a proportionate part only of the fee in sub-section 2 shall be charged. 2. An annual fee at the rate of four cents for every hundred dollars of the paid up capital of the company to which the licence is issued shall be paid

by such company in respect of such licence. Such fee shall be paid to the Colonial Treasurer within four months of the date of the licence. 3. The company shall give to the Registrar notice of the situation of the office where any such register (in this Ordinance called a local register) is kept or proposed to be kept, and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued. 4. A local register shall, as regards the particulars entered therein, be deemed to be a part of the company's register of members, and shall be prima facie evidence of all particulars entered therein. Any such register shall be kept in the manner provided by this Ordinance, with this qualification, that the advertisement mentioned in section 36 shall be inserted in some newspaper circulating in the district wherein the register to be closed is kept. 5. The company shall transmit to its registered office in Hongkong a copy of every entry in its local register or registers as soon as may be after such entry is made, and the company shall cause to be kept at its registered office, duly entered up from time to time, a duplicate or duplicates of its local register or registers. The provisions of section 26 shall apply to every such duplicate, and every such duplicate shall, for all the purposes of this Ordinance, be deemed to be part of the register of members of the company. 6. Subject to the provisions of this Ordinance with respect to the duplicate register, the shares registered in a local register shall be distinguished from the shares registered in the principal register and no transaction with respect to any share registered in a local register shall, during the continuance of the registration of such share in such local register, be registered in any other register. 7. The company may discontinue the keeping of any local register, and thereupon all entries in that register shall be transferred to some other local register kept by the company, or to the register of members kept at the registered office of the company. 8. In relation to stamp duties the following provisions shall have effect: a) An instrument of transfer of a share registered in a local register under this Ordinance, shall, unless executed within the Colony, be exempt from stamp duty. b) The share or other interest of a deceased member registered in a local register under this Ordinance shall as far as relates to Colonial probate duty not be deemed to be part of his estate and effects situated in the Colony for or in respect of which probate or letters of administration is or are to be granted or whereof an inventory is to be exhibited and recorded: c) Subject to the provisions of this Ordinance, and of any rules made thereunder, any company may by its regulations as originally framed, or as altered by special resolution, make such provisions as it may think fit respecting the keeping of local registers.

Notice to company keeping a local register without a licence and proceedings consequent thereon. 36. 1. When the Registrar has reasonable cause to believe that a company is keeping in any place where it transacts business outside the Colony a register of members without having a valid licence under this Ordinance he shall publish in the *Gazette* and send to the company a notice that at the expiration of two months from the date of such notice the name of the company mentioned therein will, unless cause to the contrary be shown, be struck off the register and the company will be dissolved. 2. At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike the name of the company off the register and shall publish notice thereof in the *Gazette* and on such publication the company whose name is so struck off shall be dissolved: Provided that the liability, if any, of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved. 3. If any company or member thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member may apply to the Court, and the Court, if it be satisfied that it is just to do so, may order the name of the company to be restored to the register and thereupon the company shall be deemed to have continued in existence as if the name had never been struck off: and the Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had never been struck off. 4. A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the Registrar of Companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Penalty. 37. If a company makes default in complying with any of the provisions of section 35 or of any rule or regulation relating thereto it shall be liable to a penalty not exceeding fifty dollars for every day during which the default continues and every director or manager of the company who knowingly or wilfully authorises or permits the default shall be liable to the like penalty.

Issue and effect of share warrants to bearer. 38. 1. A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Ordinance termed a share warrant. 2. A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant. 3. The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled. 4. The bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Ordinance, either to the full extent or for any purposes defined in the articles; except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such qualification is required by the articles. 5. On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely: i) The fact of the issue of the warrant; ii) A statement of the shares or stock included in the warrant distinguishing each share by its number; and iii) The date of the issue of the warrant. 6. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Ordinance to be entered in the register of members; and, on the surrender, the date of the surrender must be entered as if it were the date at which a person ceased to be a member.

Imp. § 37.

Forgery, personation, unlawfully engraving plates, etc. 39. 1. If any person: i) With intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Ordinance; or by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Ordinance, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered; or ii) Falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Ordinance, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to imprisonment with hard labour for life. 2. If any person without lawful authority or excuse, proof whereof shall lie on him, engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of this Ordinance, or to be a blank share warrant or coupon so issued or made, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to imprisonment with hard labour for any term not exceeding fourteen years.

Imp. § 38.

Power of company to arrange for different amounts being paid on shares. 40. A

company, if so authorised by its articles, may do any one or more of the following things: namely: 1. Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares; 2. Accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up; 3. Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Imp. § 39.

Power to return accumulated profits in reduction of paid-up share capital. 41.

1. When a company has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount. 2. The resolution shall not take effect until a memorandum, showing the particulars required by this Ordinance in the case of a reduction of share capital, has been produced to and registered by the Registrar of Companies, but the other provisions of this Ordinance with respect to reduction of share capital shall not apply to a reduction of paid-up share capital under this section. 3. On a reduction of paid-up capital in pursuance of this section any shareholder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the shares held by him either alone or jointly with any other person, which, in consequence of the reduction, would otherwise be returned to him or them, and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained on fixed deposit in such bank as the directors may determine, and on the money so invested or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received from time to time on the deposits. 4. The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of the call. 5. On a reduction of paid-up share capital in pursuance of this section, the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction. 6. After any reduction of share capital under this section the company shall specify in the annual list of members required by this Ordinance the amounts retained at the request of any of the shareholders in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section.

Imp. § 40.

Power of company limited by shares to alter its share capital. 42. 1.

A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may: a) Increase its share capital by the issue of new shares of such amount as it thinks expedient; b) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares; c) Convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination; d) Subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; e) Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. 2. The powers conferred by this section with respect to subdivision of shares must be exercised by special resolution. 3. Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the

alteration. If a company makes default in complying with this provision it shall be liable to a fine not exceeding ten dollars for each copy in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty. 4. A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Ordinance.

Imp. § 41.

Notice to Registrar of consolidation of share capital, conversion of shares into stock, etc. 43. Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock, or reconverted stock into shares, it shall give notice to the Registrar of Companies of the consolidation, division, conversion, or reversion specifying the shares consolidated, divided, or converted, or the stock reconverted.

Imp. § 42.

Effect of conversion of shares into stock. 44. Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the Registrar of Companies, all the provisions of this Ordinance which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Ordinance.

Imp. § 43.

Notice of increase of share capital or of members. 45. 1. Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall give to the Registrar of Companies, in the case of an increase of share capital, within twenty-eight days after the passing, or in the case of a special resolution the confirmation, of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the Registrar shall record the increase. 2. If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding fifty dollars for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Imp. § 44.

Reorganisation of share capital. 46. 1. A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes: Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class. 2. Where an order is made under this section an office copy thereof shall be filed with the Registrar of Companies within seven days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed.

Imp. § 45.

Reduction of share capital.

Special resolution for reduction of share capital. 47. 1. Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may: a) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or b) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or c) Either with

or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly. 2. A special resolution under this section is in this Ordinance called a resolution for reducing share capital.

Imp. § 46.

Application to Court for confirming order. 48. Where a company has passed and confirmed a resolution for reducing share capital it may apply by petition to the Court for an order confirming the reduction.

Imp. § 47.

Addition to name of company of "and reduced." 49. On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the Court may fix, the words "and reduced," as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company: Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

Imp. § 48.

Objections by creditors, and settlement of list of objecting creditors. 50. 1. Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction. 2. The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction. 3. Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount; (that is to say): i) If the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; ii) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

Imp. § 49.

Order confirming reduction. 51. The Court, if satisfied, with respect to every creditor of the company who under this Ordinance is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

Imp. § 50.

Registration of order and minute of reduction. 52. 1. The Registrar of Companies on production to him of an order of the Court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute. 2. On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect. 3. Notice of the registration shall be published in such manner as the Court may direct. 4. The Registrar shall certify under his hand the registration of the order and minute, and

his certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

Imp. § 51.

Minute to form part of memorandum. 53. 1. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein; and must be embodied in every copy of the memorandum issued after its registration. 2. If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding ten dollars for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Imp. § 52.

Liability of members in respect of reduced shares. 54. A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute: Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Ordinance with respect to winding up by the Court, to pay the amount of his debt or claim, then: i) Every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and ii) If the company is wound up, the Court, on the application of any such creditor, and proof of his ignorance as aforesaid may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding-up. Nothing in this section shall affect the rights of the contributories among themselves.

Imp. § 53.

Penalty on concealment of name of creditor. 55. If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanour.

Imp. § 54.

Publication of reasons for reduction. 56. In any case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

Imp. § 55.

Increase and reduction of share capital in case of a company limited by guarantee having a share capital. 57. A company limited by guarantee and registered on or after the date of the coming into operation of this Ordinance, may, if it has a share capital, and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Ordinance.

Imp. § 56.

Registration of unlimited company as limited.

Registration of unlimited company as limited. 58. 1. Subject to the provisions of this section, any company registered as unlimited may register under this Ordinance as limited, or any company already registered as a limited company, may re-register under this Ordinance, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations, or contracts

incurred or entered into by, to, with, or on behalf of the company before the registration, and those debts, liabilities, obligations, and contracts may be enforced in manner provided by Part VII of this Ordinance in the case of a company registered in pursuance of that Part. 2. On registration in pursuance of this section the Registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Ordinance, and as if the provisions of the Ordinance or Ordinances under which the company was previously registered and regulated had been contained in different Ordinances from those under which the company is registered as a limited company.

Imp. § 57.

Power of unlimited company to provide for reserve share capital on registration.

59. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely: a) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up; b) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Imp. § 58.

Reserve liability of limited company.

Reserve liability of limited company. 60. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Imp. § 59.

Unlimited liability of directors.

Limited company may have directors with unlimited liability. 61. 1. In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited. 2. In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited. 3. If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand dollars, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Imp. § 60.

Special resolution of limited company making liability of directors unlimited.

62. 1. A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director. 2. Upon the confirmation of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum; and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution. 3. If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten dollars for each copy in respect of which default is made; and every director or manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Imp. § 61.

Part III. Management and Administration.

Office and name.

Registered office of company. 63. 1. Every company shall have a registered office in the Colony to which all communications and notices may be addressed. 2. Notice of the situation of the registered office, and of any change therein, shall be given to the Registrar of Companies, who shall record the same. 3. If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding fifty dollars for every day during which it so carries on business.

Imp. § 62.

Publication of name by a limited company. 64. 1. Every limited company: a) Shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, and on the outside of its registered office, in a conspicuous position, in letters easily legible; b) Shall have its name mentioned in legible characters on its seal; c) Shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company; d) Any limited company with a Chinese name or using a Chinese equivalent shall append the Chinese characters 有限公司. 2. If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Ordinance, it shall be liable to a fine not exceeding fifty dollars for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty. 3. If any director, manager, or officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred dollars, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Imp. § 63.

Meetings and proceedings.

Annual general meeting. 65. 1. A general meeting of every company shall be held once at least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every director, manager, secretary, and other officer of the company, who is knowingly a party to the default shall be liable to a fine not exceeding five hundred dollars. 2. When default has been made in holding a meeting of the company in accordance with the provisions of this section, the Court may, on the application of any member of the company call or direct the calling of a general meeting of the company.

Imp. § 64.

First statutory meeting of company. 66. 1. Every company limited by shares and registered on or after the date of the coming into operation of this Ordinance shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting. 2. The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Ordinance called "the statutory report") to every member of the company and to every other person entitled under this Ordinance to receive it. 3. The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state: a) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the

case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted: b) The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid: c) An abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company; d) The names, addresses, and descriptions of the directors, auditors, managers (if any), and secretary of the company; and e) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification. 4. The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company. 5. The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the Registrar of Companies forthwith after the sending thereof to the members of the company. 6. The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting. 7. The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed. 8. The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting. 9. If a petition is presented to the Court in manner provided by Part IV of this Ordinance for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just. 10. The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

Imp. § 65.

Convening of extraordinary general meeting on requisition. 67. 1. Notwithstanding anything in the articles of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company. 2. The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists. 3. If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit. 4. If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting. 5. Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

Imp. § 66.

Provisions as to meetings and votes. 68. In default of, and subject to, any regulations in the articles: i) A meeting of a company may be called by seven days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the first Schedule to this Ordinance; ii) Five members may

call a meeting; iii) Any person elected by the members present at a meeting may be chairman thereof; iv) Every member shall have one vote.

Imp. § 67.

Representation of companies at meetings of other companies of which they are members. 69. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

Imp. § 68.

Definitions of extraordinary and special resolution. 70. 1. A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given. 2. A resolution shall be a special resolution when it has been: a) Passed in manner required for the passing of an extraordinary resolution; and b) Confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting. 3. At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. 4. At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles. 5. When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company. 6. For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

Imp. § 69.

Registration and copies of special resolutions. 71. 1. A copy of every special and extraordinary resolution shall within twenty-eight days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the Registrar of Companies, who shall record the same. 2. Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution. 3. Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of fifty cents or such less sum as the company may direct. 4. If a company makes default in printing or forwarding a copy of a special or extraordinary resolution to the Registrar it shall be liable to a fine not exceeding twenty dollars for every day during which the default continues. 5. If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding ten dollars for each copy in respect of which default is made. 6. Every director and manager of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

Imp. § 70.

Minutes of proceedings and directors. 72. 1. Every company shall cause minutes of all proceedings of general meetings and of its directors to be entered in books kept for that purpose. 2. Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings. 3. Until the contrary is proved, every general meeting of the company or meeting of directors in respect

of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, or liquidators, shall be deemed to be valid.
Imp. § 71.

Appointment, qualification, and duties, etc., of directors.

Restrictions on appointment or advertisement of director. 73. 1. A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing: i) Signed and filed with the Registrar of Companies a consent in writing to act as such director; and ii) Either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the Registrar a contract in writing to take from the company and pay for his qualification shares (if any). 2. On the application for registration of the memorandum and articles of a company the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding five hundred dollars. 3. This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

Imp. § 72.

Qualification of director. 74. 1. Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company. 2. The office of director of a company shall be vacated, if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification. 3. If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable on conviction to a fine not exceeding fifty dollars for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

Imp. § 73.

Validity of acts of directors. 75. The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Imp. § 74.

List of directors to be sent to Registrar. 76. 1. Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors, and send to the Registrar of Companies a copy thereof, and from time to time notify to the Registrar any change among its directors. 2. If default is made in compliance with this section, the company shall be liable to a fine not exceeding fifty dollars for every day during which the default continues; and every director of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Imp. § 75.

Duties of directors as to accounts.

Duties of directors as to accounts. 77. 1. The directors shall cause true accounts to be kept: Of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place, and of the assets and liabilities of the company. 2. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors. 3. The directors shall from time to time determine whether and to what extent and at what times and places

and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting. 4. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting. 5. A balance sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund. 6. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder. 7. If default is made in compliance with any of the provisions of this section every director of the company who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding five hundred dollars.

Contracts, etc.

Form of contracts. 78. 1. Contracts on behalf of a company may be made as follows (that is to say): i) Any contract which if made between private persons would be by law required to be in writing under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged; ii) Any contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged; iii) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged. 2. All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators as the case may be.

Imp. § 76.

Bills of exchange and promissory notes. 79. A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

Imp. § 77.

Execution of deeds abroad. 80. A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the Colony; and every deed signed by such attorney, on behalf of the company, and under his seal, shall bind the company, and have the same effect as if it were under its common seal.

Imp. § 78.

Power for company to have official seal for use abroad. 81. 1. A company whose objects require or comprise the transaction of business outside the Colony may, if authorised by its articles, have for use in any territory, district, or place not situate in the Colony, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used. 2. A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district, or place not situate in the Colony, to affix the same to any deed or other document to which the company is party in that territory, district, or place. 3. The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the

person dealing with him. 4. The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same. 5. A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Prospectus.

Filing of prospectus. 82. 1. Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus. 2. A copy of every such prospectus signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the Registrar of Companies on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration. 3. The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section. 4. Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section. 5. If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding fifty dollars for every day from the date of the issue of the prospectus until a copy thereof is so filed.

Imp. § 80.

Specific requirements as to particulars of prospectus. 83. 1. Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state: a) The contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and b) The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and c) The names, descriptions, and addresses of the directors or proposed directors; and d) The minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if any, paid on the shares so allotted; and e) The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and f) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures to the vendor, and where there is more than one separate vendor, or the company is a subpurchaser, the amount so payable to each vendor: Provided that, where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors; and g) The amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill; and h) The amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and i) The amount or estimated amount of preliminary expenses; and j) The amount paid within the two preceding years, or intended to be paid to any promoter, and the consideration for any such payment; and k) The dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract

entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of publication of the prospectus; and l) The names and addresses of the auditors of the company; and m) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and n) Where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively. 2. For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where: a) The purchase money is not fully paid at the date of issue of the prospectus; or b) The purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or c) The contract depends for its validity or fulfilment on the result of such issue. 3. Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "subpurchaser" included a sublessee. 4. Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void. 5. Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them. 6. In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that: a) As regards any matter not disclosed, he was not cognisant thereof; or b) The non-compliance arose from an honest mistake of fact on his part. Provided that in the event of non-compliance with the requirements contained in paragraph m of subsection 1 of this section no director or other person shall incur any liability in respect of such non-compliance unless it be proved that he had knowledge of the matters not disclosed. 7. This section shall not apply to a circular or notice inviting members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently. 8. The requirements of this section as to the memorandum and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business. 9. Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Ordinance apart from this section.

Imp. § 81.

Obligations of companies where no prospectus is issued. 84. 1. A company which does not issue a prospectus on or with reference to its formation, shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the Registrar of Companies a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the second Schedule to this Ordinance. 2. This section shall not apply to a private company or to a company which has allotted any shares or debentures before the date of the coming into operation of this Ordinance.

Imp. § 82.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus. 85. A company shall not previously to the statutory meeting vary

the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

Imp. § 83.

Liability for statements in prospectus. 86. 1. Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved: a) With respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and b) With respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation. Provided that the director, person named as director, promoter, or person who authorised the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and c) With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document; or unless it is proved: i) That having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and it was issued without his authority or consent; or ii) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or iii) That after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor. 2. Where a company existing before the date of the coming into operation of this Ordinance, has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorised the issue of the prospectus, or has adopted or ratified it. 3. Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought him against in respect thereof. 4. Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation. 5. For the purposes of this section: The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

Allotment.

Restriction as to allotment. 87. 1. No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely: a) The amount (if any) fixed by the memorandum or articles of association and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or b) If no amount is so fixed and named, then the whole amount of the share capital so offered for subscription, has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company. 2. The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Ordinance referred to as the minimum subscription. 3. The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share. 4. If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to the applicants without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part. 5. Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void. 6. This section, except subsection 3 thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription. 7. In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say): a) The amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or b) If no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash, has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company. This subsection shall not apply to a private company or to a company which has allotted any shares or debentures before the date of the coming into operation of this Ordinance.

Imp. § 85.

Effect of irregular allotment. 88. 1. An allotment made by a company to an applicant in contravention of the provisions of the last foregoing section shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up. 2. If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of the last foregoing section with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs, which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

Imp. § 86.

Restrictions on commencement of business. 89. 1. A company shall not commence any business or exercise any borrowing powers unless: a) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and b) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, or in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and c) There has been filed with the Registrar of Companies a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and d) In the case of a company which does not issue a prospectus

inviting the public to subscribe for its shares, there has been filed with the Registrar of Companies a statement in lieu of prospectus. 2. The Registrar of Companies shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled: Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares the Registrar shall not give such certificate unless a statement in lieu of a prospectus has been filed with him. 3. Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding. 4. Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures. 5. If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding five hundred dollars for every day during which the contravention continues. 6. Nothing in this section shall apply to a private company, or to a company registered before the date of the coming into operation of this Ordinance which does not issue a prospectus inviting the public to subscribe for its shares.

Imp. § 87.

Return as to allotments. 90. 1. Whenever a company limited by shares makes any allotment of its shares, the company shall within six weeks thereafter file with the Registrar of Companies: a) A return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due on each share; and b) In the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to such allotment together with any contract of sale, or for services or other consideration in respect of which such allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted. 2. Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment file with the Registrar of Companies the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the *Stamp Ordinance 1901*, or any Ordinance amending the same and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 9 of that Ordinance. 3. If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding five hundred dollars for every day during which the default continues: Provided that, in case of default in filing with the Registrar of Companies within six weeks after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the Court may think proper.

Commissions and discounts.

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc. 91. 1. It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised, and if the amount or rate per cent. of the commission paid or agreed to be paid is: a) In the cases of shares offered to the public for subscription, disclosed in the prospectus; or b) In the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the Registrar of

Companies, and, where a circular or notice, not being a prospectus, inviting subscriptions for the shares is issued, also disclosed in that circular or notice. 2. Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise. 3. Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Imp. § 89.

Statement in balance-sheet as to commissions and discounts. 92. Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be separately stated in every balance sheet of the company until the whole amount thereof has been written off.

Imp. § 90.

Payment of interest out of capital.

Power of company to pay interest out of capital in certain cases. 93. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant: Provided that: 1. No such payment shall be made unless the same is authorised by the articles or by special resolution. 2. No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Court. 3. Before sanctioning any such payment the Court may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for payment of the costs of the inquiry. 4. The payment shall be made only for such period as may be determined by the Court; and such period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided. 5. The rate of interest shall in no case exceed six per cent. per annum or such lower rate as may for the time being be prescribed by the Court. 6. The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid. 7. The accounts of the company shall show the share capital in which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

Imp. § 92.

Certificates of shares, etc.

Limitation of time for issue of certificates. 94. 1. Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the certificates of all shares, debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide. 2. If default is made in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding fifty dollars for every day during which the default continues.

Imp. § 92.

Information as to mortgages, charges, etc.

Registration of mortgages and charges in Colony. 95. 1. Every mortgage or charge created after the date of the coming into operation of this Ordinance by a company registered in the Colony and being either: a) A mortgage or charge for the purpose of securing any issue of debentures; or b) A mortgage or charge on uncalled share capital of the company; or c) A mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or d) A mortgage or charge on any land, wherever situate, or any interest therein; or e) A mortgage or charge on any book debts of the company; or f) A floating charge on the undertaking or property of the company, shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the Registrar of Companies for registration in manner required by this Ordinance within five weeks after the date of its creation but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable: Provided that: i) In the case of a mortgage or charge created out of the Colony comprising solely property situate outside the Colony, the delivery to and the receipt by the Registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and five weeks after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the Colony, shall be substituted for five weeks after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the Registrar; and ii) Where the mortgage or charge is created in the Colony but comprises property outside the Colony, the instrument creating or purporting to create the mortgage or charge may be sent for registration, notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and iii) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and iv) The holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land. 2. The Registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the date of the coming into operation of this Ordinance, and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge. 3. Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient if there are delivered to or received by the Registrar within five weeks after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars: a) The total amount secured by the whole series; and b) The dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and c) A general description of the property charged; and d) The names of the trustees, if any, for the debenture holders; together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the Registrar shall, on payment of the prescribed fee, enter those particulars in the register: Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued. 4. Where any commission, allowance, or discount has been paid or made, either directly or indirectly, by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally for any debentures of the company, or procuring or agreeing to procure

subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued: Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount. 5. The Registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with. 6. The company shall cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the mortgage or charge so registered: Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created. 7. It shall be the duty of the company to send to the Registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein. Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration. 8. The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding fifty cents for each inspection. 9. Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures a copy of one such debenture shall be sufficient.

Imp. § 93.

Registration of enforcement of security. 96. 1. If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the powers contained in the instrument give notice of the fact to the Registrar of Companies, and the Registrar shall on payment of the prescribed fee, enter the fact in the register of mortgages and charges. 2. If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding fifty dollars for every day during which the default continues.

Imp. § 94.

Filing of accounts of receivers and managers. 97. 1. Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half year while he remains in possession, and also on ceasing to act as receiver or manager, file with the Registrar of Companies an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the Registrar notice to that effect, and the Registrar shall enter the notice in the register of mortgages and charges. 2. Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five hundred dollars.

Imp. § 95.

Rectification of register of mortgages. 98. A Judge of the Court, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Judge just and expedient, order that the time for registration be extended or, as the case may be, that the omission or misstatement be rectified.

Imp. § 96.

Entry of satisfaction. 99. The Registrar of Companies may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

Imp. § 97.

Index to register of mortgages and charges. 100. The Registrar of Companies shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Ordinance.

Imp. § 98.

Penalties. 101. 1. If any company makes default in sending to the Registrar of Companies for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series, requiring registration with the Registrar under the foregoing provisions of this Ordinance, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding five hundred dollars for every day during which the default continues. **2.** Subject as aforesaid, if any company makes default in complying with any of the requirements of this Ordinance as to the registration with the Registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted the default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one thousand dollars. **3.** If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the Registrar under the foregoing provisions of this Ordinance without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one thousand dollars.

Imp. § 99.

Company's register of mortgages. 102. 1. Every limited company shall keep at its registered office a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer), the names of the mortgagees or persons entitled thereto. **2.** If any director or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding five hundred dollars.

Imp. § 100. Debentures issued by a company, and secured upon the capital stock or goods, chattels, and effects of such company are not subject to the provisions of the *Bills of Sales Ordinance*. — Ord. No. 6 of 1886, § 28.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages. 103. 1. The copies of instruments creating any mortgage or charge requiring registration under this Ordinance with the Registrar of Companies and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of the Registrar of Companies or of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding fifty cents for each inspection, as the company may prescribe. **2.** If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding fifty dollars and a further fine not exceeding twenty dollars for every day during which the refusal continues; and, in addition to the above penalty any Judge of the Court sitting in chambers may by order compel an immediate inspection of the copies or register. **3.** If such inspection cannot be obtained at the registered office of the company with the exercise of a reasonable amount of diligence, the company shall be liable to the same penalties as if such inspection had been actually refused.

Imp. § 101.

Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed. 104. 1. Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified

in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of twenty-five cents for every one hundred words required to be copied. 2. A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one dollar or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of twenty-five cents for every one hundred words required to be copied. 3. If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty dollars, and to a further fine not exceeding twenty dollars for every day during which the refusal continues and, every director, manager, secretary, or other officer of the company who knowingly authorises or permits such refusal incur the like penalty. 4. If such inspection cannot be obtained at the registered office of the company with the exercise of a reasonable amount of diligence, the company shall be liable to the same penalties, as if such inspection had been actually refused.

Imp. § 102.

Debentures and floating charges.

Perpetual debentures. 105. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Ordinance, shall not be invalid by reason only that thereby the debentures are made irredeemable, or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Imp. § 103.

Power to re-issue redeemed debentures in certain cases. 106. 1. Where either before or after the passing of this Ordinance a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued. 2. Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Ordinance been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section. 3. Where a company has either before or after the passing of this Ordinance deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited. 4. The re-issue of a debenture or the issue of another debenture in its place under the power by this section, given to, or deemed to have been possessed by a company, whether the re-issue was made before or after the passing of this Ordinance, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued: Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty. 5. Nothing in this section shall prejudice: a) The operation of any judgment or order of a Court of competent jurisdiction pronounced or made before the date of the coming into operation of this Ordinance as between the parties to the proceedings in which the judgment was

pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Ordinance had not been passed; or b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished reserved to a company by its debentures or the securities for the same.

Imp. § 104.

Specific performance of contract to subscribe for debentures. 107. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Imp. § 105.

Payments of certain debts out of assets subject to floating charge in priority to claim under the charge. 108. 1. Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Part IV of this Ordinance relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures. 2. The periods of time mentioned in the said provisions of Part. IV of this Ordinance shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be. 3. Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Statement to be published by banking and certain other companies.

Certain companies to publish statement in Schedule. 109. 1. Every company being a limited banking company, or an insurance company or a deposit, provident, or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form marked C in the first Schedule to this Ordinance as near thereto as circumstances will admit. 2. A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on. 3. Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding twenty-five cents. 4. If default is made in compliance with this section, the company shall be liable to a fine not exceeding fifty dollars for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty. 5. For the purposes of this Ordinance a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company. 6. This section shall not apply to any life insurance company to which the provisions of the *Life Insurance Companies Ordinances, 1907 and 1909*, as to the annual statement to be made by such a company, apply with or without modifications, if the company complies with those provisions.

Inspection and audit.

Investigation of affairs of company by inspectors. 110. 1. The Court may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Court directs: i) In the case of a banking company having a share capital, on the application of members holding not less than one third of the shares issued; ii) In the case of any other company having a share capital, on the application of members holding not less than one tenth of the shares issued; iii) In the case of a company not having a share capital on the application of not less than one fifth in number of the persons on the company's register of members. 2. The application shall be supported by such evidence as the Court may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation; and the Court may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry. 3. It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power. 4. An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly. 5. If any

officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding fifty dollars in respect of each offence. 6. On the conclusion of the investigation the inspectors shall report their opinion to the Court, and a copy of the report shall be forwarded by the Registrar of the Court to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them. The report shall be written or printed, as the Court may direct. 7. All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Court direct the same to be paid by the company, which the Court is hereby authorised to do.

Imp. § 109.

Power of company to appoint inspectors. 111. 1. A company may by special resolution appoint inspectors to investigate its affairs. 2. Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Court, except that, instead of reporting to the Court, they shall report in such manner and to such persons as the company in general meeting may direct. 3. Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Court.

Imp. § 110.

112. Report of inspectors to be evidence. 112. A copy of the report of any inspectors appointed under this Ordinance, authenticated by the seal of the company whose affairs they have investigated shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Imp. § 111.

Appointment and remuneration of auditors. 113. 1. Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting. 2. If an appointment of auditors is not made at an annual general meeting, the Court may, on the application of any member of the company, appoint an auditor or auditors of the company for the current year, and fix the remuneration to be paid to him or them by the company for his services. 3. A director or officer of the company or the partner or employee of such director shall not be capable of being appointed auditor of the company. 4. A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting: Provided that if, after a notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after that notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting. 5. The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint auditors. 6. The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act. 7. The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

Imp. § 112.

Powers and duties of auditors. 114. 1. Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such

information and explanation as may be necessary for the performance of the duties of the auditors. 2. The auditors shall make a report to the shareholders on the accounts examined by them and in every balance sheet laid before the company in general meeting during their tenure or office, and the report shall state: a) Whether or not they have obtained all the information and explanations they have required; and b) Whether in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company. 3. The balance sheet shall be signed on behalf of the board by two of the directors of the company, or if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder. Any shareholder shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding twenty-five cents for every hundred words. 4. If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding five hundred dollars. 5. In the case of a banking company: a) If the company has branch banks beyond the limits of the Colony it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the office of the company in the Colony; and b) The balance sheet must be signed by the secretary or manager (if any), and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

Imp. § 113.

Rights of preference shareholders, etc., as to receipt and inspection of reports.

115. 1. Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company. 2. This section shall not apply to a private company, nor to a company registered before the date of the coming into operation of this Ordinance.

Imp. § 114.

Carrying on business with less than the legal minimum of members.

Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members. 116. If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months, and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same, without joinder in the action of any other member.

Imp. § 115.

Service and authentication of documents.

Service of documents on company. 117. A document may be served on a company by leaving it at or sending it by registered post to the registered office of the company.

Imp. § 116.

Authentication of documents. 118. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

Imp. § 117.

Tables and forms.

Application and alteration of tables and forms. 119. 1. The forms in the third Schedule to this Ordinance or forms as near thereto as circumstances admit shall be

used in all matters to which those forms refer. 2. The Governor may alter any of the tables and forms in the first Schedule to this Ordinance, so that he does not increase the amount of fees payable to the Registrar in the said Schedule mentioned, and may alter or add to the forms in the said third Schedule. 3. Any such table or form, when altered, shall be published in the *Gazette*, and thenceforth shall have the same force as if it were included in one of the Schedules to this Ordinance, but no alteration made by the Governor in Table A in the said first Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table.

Imp. § 118.

Arbitrations.

Arbitration between companies and others. 120. 1. A company may by writing under its common seal agree to refer and may refer to arbitration, in accordance with the provisions of the *Railway Companies Arbitration Act, 1859*, of the Imperial Parliament, any existing or future difference between itself and any other company or person. 2. Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body. 3. All the provisions of the *Railway Companies Arbitration Act, 1859*, shall apply to arbitrations between companies and persons in pursuance of this Ordinance; and in the construction of those provisions "the companies" shall include companies under this Ordinance. 4. For the purposes of the application of the said Act to this Ordinance, the words "the Board of Trade" therein occurring shall be read as meaning the Governor and the words "all the Superior Courts of Law and Equity in the United Kingdom according to their respective jurisdiction" and the words "any of His Majesty's Superior Courts of Record at Westminster, or as the case may be at Dublin" shall be read as meaning the Court.

Imp. § 119.

Power to compromise.

Power to compromise with creditors and members. 121. 1. Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Courts direct. 2. If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company. 3. In this section the expression "company" means any company liable to be wound up under this Ordinance.

Imp. § 120.

Meaning of "private company."

Meaning of "private company." 122. 1. For the purposes of this Ordinance the expression "private company" means a company which by its articles: a) Restricts the right to transfer its shares; and b) Limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and c) Prohibits any invitation to the public to subscribe for any shares or debentures of the company. 2. A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and by filing with the Registrar of Companies such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such statutory declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company. 3. Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

Imp. § 121.

Part IV. Winding-Up.

Preliminary.

Modes of winding-up. 123. 1. The winding-up of a company may be either: i) By the Court; or ii) Voluntary; or iii) Subject to the supervision of the Court. 2. The provisions of this Ordinance with respect to winding-up apply, unless the contrary appears, to the winding-up of a company in any of those modes.
Imp. § 122.

Contributories.

Liability as contributories of present and past members. 124. 1. In the event of a company being wound up every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say): i) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding-up; ii) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member; iii) A past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance; iv) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member; v) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound-up; vi) Nothing in this Ordinance shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract; vii) A sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves. 2. In the winding-up of a limited company, any director or manager, whether past or present, whose liability is, in pursuance of this Ordinance, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding-up a member of an unlimited company: Provided that: i) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding-up; ii) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office; iii) Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up. 3. In the winding-up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Imp. § 123.

Definition of contributory. 125. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Imp. § 124.

Nature of liability of contributory. 126. The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when

his liability commenced, but payable at the times when calls are made for enforcing the liability.

Imp. § 125.

Contributories in case of death of member. 127. 1. If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly. 2. Where the personal representatives are placed on the list of contributories, the heirs or devisees shall not be added unless the Court thinks fit. 3. If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the personal and real estates of the deceased contributory, or either of them, and of compelling payment thereof of the money due.

Imp. § 126.

Contributories in case of bankruptcy of member. 128. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then: 1. His trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and 2. There may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Imp. § 127.

Provision as to married women. 129. 1. The husband of a female contributory married before the first day of January, 1883, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly. 2. Subject as aforesaid, nothing in this Ordinance shall affect the provisions of the *Married Women's Property Ordinance, 1906.* or the *Married Women's Property Amendment Ordinance, 1907.*

Imp. § 128.

Winding-up by Court.

Circumstances in which company may be wound up by Court. 130. A company may be wound up by the Court: i) If the company has by special resolution resolved that the company be wound up by the Court; ii) If default is made in filing the statutory report or in holding the statutory meeting; iii) If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; iv) If the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; v) If the company is unable to pay its debts; vi) If the Court is of opinion that it is just and equitable that the company should be wound up.

Imp. § 129.

Company when deemed unable to pay its debts. 131. A company shall be deemed unable to pay its debts: i) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred dollars then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for two months thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or ii) If execution or other process issued on a judgment, decree, or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or iii) If it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

Imp. § 130.

Provisions as to applications for winding-up. 132. 1. An application to the Court for the winding-up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately: Provided that: a) A con-

tributory shall not be entitled to present a petition for winding up a company unless: i) Either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or ii) The shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding-up, or have devolved on him through the death of a former holder and; b) A petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and c) The Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court. 2. Where a company is being wound up voluntarily or subject to supervision a petition may be presented by the official receiver attached to the Court, as well as by any other person authorised in that behalf under the other provisions of this section, but the Court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding-up or winding-up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories. 3. Where under the provisions of this Part of this Ordinance any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

Imp. § 137.

Effect of winding-up order. 133. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Imp. § 138.

Commencement of winding-up by Court. 134. A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Imp. § 139.

Power to stay or restrain proceedings against company. 135. At any time after the presentation of a petition for winding up, and before a winding-up order has been made, the company, or any creditor or contributory, may, where any action or proceeding against the company is pending, apply to the Court for a stay of the proceedings or to restrain further proceedings in the action or proceeding, and the Court may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Imp. § 140.

Powers of Court on hearing petition. 136. 1. On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets. 2. Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

Imp. § 141.

Actions stayed on winding-up order. 137. When a winding-up order has been made, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

Imp. § 142.

Copy of order to be forwarded to Registrar. 138. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the Registrar of Companies, who shall make a minute thereof in his books relating to the company.

Imp. § 143.

Power of Court to stay winding up. 139. The Court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Imp. § 144.

Court may have regard to wishes of creditors or contributories. 140. The Court may, as to all matters relating to a winding-up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Imp. § 145.

Official receiver.

Definition of official receiver. 141. 1. For the purposes of this Ordinance so far as it relates to the winding-up of companies by the Court the term "official receiver" shall mean the official receiver, if any, attached to the Court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Governor may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Governor. 2. Any such officer shall for the purpose of his duties under this Ordinance be styled the official receiver.

Imp. § 146.

Statement of company's affairs to be submitted to official receiver. 142. 1. Where the Court has made a winding-up order, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require. 2. The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the winding-up order, as the official receiver, subject to the direction of the Court, may require to submit and verify the same. 3. The statement shall be submitted within twenty-eight days from the date of the order, or within such extended time as the official receiver or the Court may for special reasons appoint. 4. Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the Court. 5. If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred dollars for every day during which the default continues. 6. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

Imp. § 147.

Report by official receiver. 143. 1. Where the Court has made a winding-up order, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the Court: a) As to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and b) If the company has failed, as to the causes of the failure; and c) Whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof. 2. The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or officer of the company in relation to the company since

the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

Imp. § 148.

Liquidators.

Appointment, remuneration, and title of liquidators. 144. 1. For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators. 2. The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up. 3. a) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed; b) On the winding-up order being made the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such; c) When a person other than the official receiver is appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the Registrar of Companies and given security to the satisfaction of the official receiver. 4. If more than one liquidator is appointed by the Court, the Court shall declare whether any act by this Ordinance required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed. 5. A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court. 6. A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court and the official receiver shall by virtue of his office be the liquidator during the vacancy. 7. Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the Court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the Court directs. 8. A liquidator shall be described, where a person other than the official receiver is liquidator, by the style of the liquidator, and, where the official receiver is liquidator, by the style of the official receiver and liquidator, of the particular company in respect of which he is appointed, and not by individual name. 9. The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Imp. § 149.

Custody of company's property. 145. In a winding-up by the Court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

Imp. § 150.

Powers of liquidator. 146. 1. The liquidator in a winding-up by the Court shall have power, with the sanction either of the Court or of the committee of inspection: a) To bring or defend any action or other legal proceeding in the name and on behalf of the company; b) To carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof; c) To employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself: but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction. The sanction given for the purpose of this subsection shall not be a general sanction to do all or any of the above-mentioned things, but shall only be a sanction to do the particular thing or things for which permission is sought. 2. The liquidator in a winding-up by the Court shall have power: a) To sell the real and personal property, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels; b) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal; c) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors; d) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of

the company, in the course of its business; e) To raise on the security of the assets of the company any money requisite; f) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself; g) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets. 3. The exercise by the liquidator in a winding-up by the Court of the powers conferred by this section shall be subject to the control of the Court, and the official receiver or any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers. 4. Where a liquidator is provisionally appointed by the Court, the Court may limit and restrict his powers by the order appointing him.

Imp. § 151.

Meetings of creditors and contributories in winding-up. 147. 1. When a winding-up order has been made by the Court the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of: a) Determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the official receiver; and b) Determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed. 2. The Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the Court shall decide the difference and make such order thereon as the Court may think fit. 3. In case a liquidator is not appointed by the Court the official receiver shall be the liquidator of the company.

Imp. § 152.

Liquidator to give information to official receiver. 148. Where in the winding-up of a company by the Court a person other than the official receiver is appointed liquidator he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Ordinance.

Imp. § 153.

Payments of liquidator winding up into bank. 149. 1. Where in the winding-up of a company by the Court a person other than the official receiver is appointed liquidator he shall open an account in the name of the company's estate at such bank as the Colonial Treasurer may direct: Provided that, if the committee of inspection satisfy the official receiver that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the official receiver shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner. 2. If any such liquidator at any time retains for more than ten days a sum exceeding five hundred dollars, or such other amount as the official receiver in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Court may think just, and to be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default. 3. A liquidator of a company which is being wound up by the Court shall not pay sums received by him as liquidator into his private banking account. 4. Where the official receiver becomes or is appointed liquidator he shall, in such manner and at such times as the Colonial Treasurer may direct, pay the money received by him to the Companies Liquidation Account at such bank as the Colonial Treasurer may direct.

Imp. § 154.

Audit of liquidator's accounts in winding up. 150. 1. Where in the winding-up of a company by the Court a person other than the official receiver is appointed liquidator he shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the official receiver an account of his receipts and payments as liquidator. 2. The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form. 3. The official receiver shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the official receiver with such vouchers and information as he may require, and the official receiver may at any time require the production of and inspect any books or accounts kept by the liquidator. 4. When the account has been audited, one copy thereof shall be filed with the official receiver, and shall be open to the inspection of any creditor, or of any person interested. 5. The official receiver shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

Imp. § 155.

Books to be kept by liquidator in winding up. 151. Every liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

Imp. § 156.

Release of liquidators. 152. When the liquidator of a company which is being wound up by the Court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, he shall cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Court, the Court shall take into consideration the report, and any objection which may be urged by the official receiver or any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly. 2. Where the release of a liquidator is withheld the Court may, on the application of the official receiver or any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty. 3. An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact. 4. Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Imp. § 157.

Exercise and control of liquidator's powers. 153. 1. Subject to the provisions of this Ordinance the liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection. 2. The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be. 3. The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding-up. 4. Subject to the provisions of this Ordinance the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors. 5. If any person is aggrieved by any act or decision of the liquidator, that person

may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of and make such order in the premises as it thinks just.

Imp. § 158.

Control over liquidators. 154. 1. When a person other than the official receiver is appointed liquidator the official receiver shall take cognizance of the conduct of liquidators of companies which are being wound up by the Court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by ordinance, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the official receiver by any creditor or contributory in regard thereto, the official receiver shall inquire into the matter, and take such action thereon as he may think expedient. 2. The official receiver may at any time require any liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding-up in which he is engaged, and may if the official receiver think fit apply to the Court to examine him or any other person on oath concerning the winding-up. 3. The Court may also direct a local investigation to be made of the books and vouchers of the liquidator.

Imp. § 159.

Committee of inspection, special manager, receiver.

Committee of inspection in winding-up. 155. 1. A committee of inspection appointed in pursuance of this Ordinance shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court. 2. The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary. 3. The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present. 4. Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator. 5. If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant. 6. Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors), or of contributories (if he represents contributories) of which seven days' notice has been given, stating the object of the meeting. 7. On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy. 8. The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee. 9. If there is no committee of inspection, any act or thing or any direction or permission by this Ordinance authorised or required to be done or given by the committee may be done or given by the Court on the application of the liquidator.

Imp. § 160.

Power to appoint special manager. 156. 1. Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court to, and the Court may on such application, appoint a special manager thereof to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court. 2. The special manager shall give such security and account in such manner as the official receiver directs. 3. The special manager shall receive such remuneration as may be fixed by the Court.

Imp. § 161.

Power to appoint official receiver as receiver for debenture holders or creditors. 157. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court the official receiver may be so appointed.

Imp. § 162.

Ordinary powers of Court.

Settlement of list of contributories and application of assets. 158. 1. As soon as may be after making a winding-up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Ordinance, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities. 2. In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others.

Imp. § 163.

Power to require delivery of property. 159. The Court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to the liquidator any money, property, or books and papers in his hands to which the company is *prima facie* entitled.

Imp. § 164.

Power to order payment of debts by contributory. 160. 1. The Court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Ordinance. 2. The Court in making such an order may in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance. 3. But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Imp. § 165.

Power of Court to make calls. 161. 1. The Court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves. 2. In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Imp. § 166.

Power to order payment into bank. 162. 1. The Court may order any contributory purchaser or other person from whom money is due to the company to pay the same in to such bank as the Court may direct to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator. 2. All moneys and securities paid or delivered into such bank in the event of a winding-up by the Court shall be subject in all respects to the orders of the Court.

Imp. § 167.

Order on contributory conclusive evidence. 163. 1. An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due. 2. All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings against the real estate of a deceased contributory, in which case the order shall be only *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Power to exclude creditors not proving in time. 164. The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Imp. § 169.

Adjustment of rights of contributories. 165. The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Imp. § 170.

Power to order costs. 166. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to payment out of the assets of the costs, charges, and expenses incurred in the winding-up in such order of priority as the Court thinks just.

Imp. § 171.

Dissolution of company. 167. 1. When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly. 2. The order shall be reported by the liquidator to the Registrar of Companies who shall make in his books a minute of the dissolution of the company. 3. If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding fifty dollars for every day during which he is in default.

Imp. § 172.

Delegation to liquidator of certain powers of Court. 168. General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Ordinance in respect of the matters following, to be exercised or performed by the liquidator as an officer of the Court, and subject to the control of the Court: that is to say, the powers and duties of the Court in respect of: a) Holding and conducting meetings to ascertain the wishes of creditors and contributories; b) Settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets; c) Requiring delivery of property or documents to the liquidator; d) Making calls; e) Fixing a time within which debts and claims must be proved: Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Imp. § 173.

Extraordinary powers of Court.

Power to summon persons suspected of having property of company. 169. 1. The Court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs, or property of the company. 2. The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them. 3. The Court may require him to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien. 4. If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended, and brought before the Court for examination.

Imp. § 174.

Power to order public examination of promoters, directors. 170. 1. When an order has been made for winding up a company by the Court, and the official receiver has made a further report under this Ordinance stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as director or officer thereof. 2. The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf, employ a solicitor with or without counsel. 3. The liquidator, where the official

receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel. 4. The Court may put such questions to the person examined as the Court thinks fit. 5. The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him. 6. A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit. 7. Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times. 8. The Court may, if it thinks fit, adjourn the examination from time to time. 9. An examination under this section may, if the Court so directs, and subject to general rules, be held before any officer of the Supreme Court, named for the purpose by the Court, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

Imp. § 175.

Power to arrest absconding contributory. 171. The Court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the Colony, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the Court may order.

Imp. § 176.

Powers of Court cumulative. 172. Any powers by this Ordinance conferred on the Court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor for the call or other sums.

Imp. § 177.

Enforcement of and appeal from orders.

Power to enforce orders. 173. Orders made by the Court under this Ordinance may be enforced in the same manner as orders made in any action pending therein.

Imp. § 178.

Appeals from order. 174. Subject to rules of Court, an appeal from any order or decision made or given in the winding-up of a company by the Court under this Ordinance shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in cases within its original jurisdiction; subject to this restriction that no such appeal shall be heard unless notice of the same is filed within fourteen days from the date of the order or decision complained of, unless such time is extended by the Full Court.

Imp. § 181.

Voluntary winding-up.

Circumstances in which company may be wound up voluntarily. 175. A company may be wound up voluntarily: 1. When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily. 2. If the company resolves by special resolution that the company be wound up voluntarily: 3. If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

Imp. § 182.

Commencement of voluntary winding-up. 176. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising the winding-up.

Imp. § 183.

Effect of voluntary winding-up on status of company. 177. When a company is wound up voluntarily the company shall, from the commencement of the winding-up, cease to carry on its business, except so far as may be required for the beneficial winding-up thereof: Provided that the corporate state and corporate powers of the company, shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Imp. § 181.

Notice of resolution to wind up voluntarily. 178. When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the *Gazette*.

Imp. § 185.

Consequences of voluntary winding-up. 179. The following consequences shall ensue on the voluntary winding-up of a company: i) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company; ii) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them; iii) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof; iv) The liquidator may, without the sanction of the Court, exercise all powers by this Ordinance given to the liquidator in a winding-up by the Court; v) The liquidator may exercise the powers of the Court under this Ordinance of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves; vi) The list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories; vii) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two; viii) If from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator; ix) The Court may, on cause shown, remove a liquidator, and appoint another liquidator.

Imp. § 186.

Notice by liquidator of his appointment. 180. 1. The liquidator in a voluntary winding-up shall, within five weeks after his appointment, file with the Registrar of Companies a notice of his appointment in the form prescribed by the Governor. 2. If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty dollars for every day during which the default continues.

Imp. § 187.

Rights of creditors in a voluntary winding-up. 181. Every liquidator appointed by a company in a voluntary winding-up shall, within three weeks from his appointment, send notice by registered post to the official receiver and to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than four not more than five weeks after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the *Gazette* and once at least in two local newspapers circulating in the district where the principal place of business of the company was situate. 2. At the meeting to be held in pursuance of the foregoing provisions of this section at which the official receiver shall have the right to be present and to speak, the creditors shall determine whether an application shall be made to the Court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the Court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting. 3. On any such application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of

a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just. 4. No appeal shall lie from an order of the Court upon such application under this section. 5. The Court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

Imp. § 188.

Power to fill vacancy in office of liquidator. 182. 1. If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding-up, the company in general meeting may, subject to any arrangement with its creditors fill the vacancy. 2. For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators. 3. The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Imp. § 189.

Delegation of authority to appoint liquidators. 183. 1. A company about to be, or in course of being wound up voluntarily may, by extraordinary resolution delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised. 2. Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

Imp. § 190.

Arrangement when binding on creditors. 184. 1. Any arrangement entered into, between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors. 2. Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against, it, and the Court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

Imp. § 191.

Power of liquidator to accept shares, etc., as consideration for sale of property of company. 185. 1. Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, (in this section called the transferee company), the liquidator of the first mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company. 2. Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company. 3. If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section. 4. If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution. 5. A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing

liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court. 6. For the purposes of an arbitration under this section the provisions of the *Companies Clauses Consolidation Act, 1845*, of the Imperial Parliament, with respect to the settlement of disputes by arbitration, shall be incorporated with this Ordinance. In the construction of such provisions this Ordinance shall be deemed to be the special Act, and "the company" shall mean the transferor company, and the words "the Board of Trade" shall be read as meaning the Governor, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators if more than one.

Imp. § 192. Dissentient shareholders are not bound to accept the price fixed by the resolution. They are entitled to avail themselves of the provisions of this section. — *Brown v. Hongkong High Level Tramways Co.*, (1906), 1 H. K. L. R. 83.

Power to apply to Court. 186. 1. Where a company is being wound up voluntarily the liquidator or any contributory or creditor or the official receiver may apply to the Court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers, which the Court might exercise if the company were being wound up by the Court. 2. The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the Court thinks fit, or may make such other order on the application as the Court thinks just.

Imp. § 193.

Power of liquidator to call general meeting. 187. 1. Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit. 2. In the event of the winding-up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding-up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.

Imp. § 194.

Final meeting and dissolution. 188. 1. In the case of every voluntary winding-up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of; and thereupon shall forward a copy of the account to the official receiver who shall have full power to investigate and report thereon, and thereafter the liquidator shall call a general meeting of the company for the purpose of laying before it the account and the official receiver's report (if any), and giving any explanation thereof. 2. The meeting shall be called by advertisement in the *Gazette* and in two local newspapers circulating in the district where the principal place of business of the company was situate, specifying the time, place, and object thereof, and published one month at least before the meeting. 3. Within three weeks after the meeting, the liquidator shall make a return to the Registrar of Companies of the holding of the meeting, and of its date, and in default of so doing shall be liable to a fine not exceeding fifty dollars for every day during which the default continues. 4. The Registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved: Provided the Court may, on the application of the liquidator or of the official receiver or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit. 5. It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to file with the Registrar an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding fifty dollars for every day during which the default continues.

Imp. § 195.

Costs of voluntary liquidation. 189. All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration

of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Imp. § 196.

Saving for rights of creditors and contributories. 190. The voluntary winding-up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, if the Court is of opinion, in the case of an application by a creditor that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding-up.

Imp. § 197.

Power of Court to adopt proceedings of voluntary winding-up. 191. Where a company is being wound up voluntarily, and an order is made for winding-up by the Court, the Court may if it thinks fit by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding-up.

Imp. § 198.

Winding-up subject to supervision of Court.

Power to order winding-up subject to supervision. 192. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

Imp. § 199.

Effect of petition for winding-up subject to supervision. 193. A petition for the continuance of a voluntary winding-up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over actions, be deemed to be a petition for winding-up by the Court.

Imp. § 200.

Court may have regard to wishes of creditors and contributories. 194. The Court may, in deciding between a winding-up by the Court and a winding-up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Imp. § 201.

Power for Court to appoint or remove liquidators. 195. 1. Where an order is made for a winding-up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator. 2. A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company. 3. The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Imp. § 202.

Effect of supervision order. 196. 1. Where an order is made for a winding-up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily. 2. A winding-up subject to the supervision of the Court is not a winding-up by the Court for the purpose of the following provisions of this Ordinance namely, those contained in sections 143, 144 (except subsection 9), 147, 149, 150, 151, 153, 155, 156, 157, 168, and 170, but, subject as aforesaid, an order for a winding-up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, and the exercise of all other powers, be deemed to be an order for winding up by the Court.

Imp. § 203.

Supplemental provisions.

Avoidance of transfers, etc., after commencement of winding-up. 197. 1. In the case of voluntary winding-up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding-up, shall be void. 2. In the case of a winding-up by or subject to the supervision of the Court, every disposition of the property (including things in action) of the company, and every

transfer of shares, or alteration in the status of its members, made after the commencement of the winding-up, shall, unless the Court otherwise orders, be void.

Imp. § 250.

Debts of all descriptions to be proved. 198. In every winding-up (subject in the case of insolvent companies to the application in accordance with the provisions of this Ordinance of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Imp. § 206.

Application of bankruptcy rules in winding-up of insolvent companies. 199. In the winding-up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Imp. § 207.

Preferential payments. 200. 1. In a winding-up there shall be paid in priority to other debts: a) All local rates due from the company at the date hereinafter mentioned, and having become due and payable within twelve months next before that date; and b) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding five hundred dollars; and c) All wages of any workman or labourer not exceeding two hundred and fifty dollars, whether payable for time or for piece work, in respect of services rendered to the company during two months before the said date. 2. The foregoing debts shall: a) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and b) So far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge. 3. Subject to the retention of such sums as may be necessary for the costs and expenses of the winding-up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them. 4. In the event of a distraint on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof: Provided that in respect of any money paid under any such charge the person entitled to apply for a warrant of distress shall have the same rights of priority as the person to whom the payment is made. 5. The date hereinbefore in this section referred to is: a) In the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and b) In any other case, the date of the commencement of the winding-up.

Imp. § 200.

Fraudulent preference. 201. 1. Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors and be invalid accordingly. 2. For the purposes of this section the presentation of a petition for winding-up in the case of a winding-up by or subject to the supervision of the Court, and a resolution for winding-up in the case of a voluntary winding-up, shall be deemed to correspond with the act of bankruptcy in the case of an individual. 3. Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Imp. § 210.

Avoidance of certain attachments, execution, etc. 202. Where any company is being wound up by or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents.

Imp. § 211.

Effect of floating charge. 203. Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

Imp. § 212.

General scheme of liquidation may be sanctioned. 204. 1. The liquidator may, with the sanction following (that is to say): a) In the case of a winding-up by the Court with the sanction either of the Court or of the committee of inspection; b) In the case of any winding-up subject to supervision, with the sanction of the Court; and c) In the case of a voluntary winding-up, with the sanction of an extraordinary resolution of the company, do the following things or any of them: i) Pay any classes of creditors in full. ii) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable; iii) Compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as may be agreed and take any security for the discharge of any such call, debt, liability, or claim, and give a complete discharge in respect thereof. 2. In the case of a winding-up by the Court the exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any of those powers.

Imp. § 214.

Power of Court to assess damages against delinquent directors, etc. 205. 1. Where in the course of winding-up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the Court thinks just. 2. This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible. 3. Where in the case of a winding up an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph g of subsection 1 of section three of the *Bankruptcy Ordinance, 1891*.

Imp. § 215.

Falsification of books misdemeanour. 206. If any director, officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour.

Imp. § 216.

Prosecution of delinquent directors, etc. 207. 1. If it appears to the Court in the course of a winding-up by or subject to the supervision of the Court that any past or present director, manager, officer, or member of the company has been guilty

of any offence in relation to the company for which he is criminally responsible, the Court may on the application of any person interested in the winding-up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company. 2. If it appears to the liquidator in the course of a voluntary winding-up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the Court, may prosecute the offender, and expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Imp. § 217.

Penalty on perjury. 208. If any person, on examination on oath authorised under this Ordinance or in any affidavit or deposition in or about the winding-up of any company or otherwise in or about any matter arising under this Ordinance wilfully and corruptly gives false evidence, he shall be liable to the penalties for wilful perjury.

Imp. § 218.

Meetings to ascertain wishes of creditors or contributories. 209. 1. Where by this Ordinance the Court is authorised, in relation to winding-up, to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court. 2. In the case of creditors regard shall be had to the value of each creditor's debt. 3. In the case of contributories regard shall be had to the number of votes conferred on each contributory by the articles.

Imp. § 219.

Books of company to be evidence. 210. Where any company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Imp. § 220.

Inspection of books. 211. After an order for a winding-up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Imp. § 221.

Disposal of books and papers of company. 212. 1. When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows (that is to say): a) In the case of a winding-up by or subject to the supervision of the Court in such way as the Court directs; b) In the case of a voluntary winding-up in such way as the company by extraordinary resolution directs. 2. After five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

Imp. § 222.

Power of Court to declare dissolution of company void. 213. Where a company has been dissolved, the Court may, at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved. 2. It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the Registrar of Companies an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding fifty dollars for every day during which the default continues.

Imp. § 223.

Information as to pending liquidations. 214. 1. Where a company is being wound up, if the winding-up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding-up is concluded, send to the Registrar of Companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. 2. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the liquidator or of the official receiver. 3. If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five hundred dollars for each day during which the default continues. 4. If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the bank, and shall be entitled to the prescribed certificate for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof. 5. For the purpose of ascertaining and getting in any money payable into the bank in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section eighty of the *Bankruptcy Ordinance, 1891*, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section. 6. Any person claiming to be entitled to any money paid into the bank in pursuance of this section may apply to the official receiver for payment of the same, and the official receiver may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due. 7. Any person dissatisfied with the decision of the official receiver in respect of any claim made in pursuance of this section may appeal to the Court.

Imp. § 224.

Judicial notice of signature of officers. 215. In all proceedings under this Part of this Ordinance, all Courts, Judges, and persons judicially acting, and all officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any official of the Court and also of the official seal or stamp of the several offices of the Court, appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Ordinance, or any official copy thereof.

Imp. § 225.

Affidavits. 216. 1. Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Ordinance may be sworn in the Colony, or elsewhere within the dominions of His Majesty, before any Court, Judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions. 2. All Courts, Judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, consul, or vice consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Ordinance.

Imp. § 228.

Companies Liquidation Account defined. 217. 1. An account, called the Companies Liquidation Account, shall be kept by the official receiver at such bank as the Colonial Treasurer may direct, and all moneys received by the official receiver in respect of proceedings under this Ordinance in connection with the winding-up of companies shall be paid to that account. 2. All payment out of money standing to the credit of the official receiver in the Companies Liquidation Account shall be made by the said bank in the prescribed manner.

Imp. § 229.

Separate accounts of particulars estates. 128. 1. An account shall be kept by the official receiver of the receipts and payments in the winding-up of each company and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate,

the official receiver shall, on the request of the committee, invest the amount not so required in such securities as the Court may direct, to be placed to the credit of the said account for the benefit of the company. 2. When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the official receiver shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary. 3. The dividends on investments under this section shall be paid to the credit of the company.

Imp. § 231.

Officers and remuneration. 219. 1. The Governor may appoint such additional officers as may be required for the execution of this Part of this Ordinance and may remove any person so appointed. 2. The Governor shall direct whether any and what remuneration is to be allowed to any officer or person performing any duties under this Part of this Ordinance in relation to the winding-up of companies, and may vary, increase, or diminish that remuneration as he thinks fit. 3. The accounts of the official receiver under this Ordinance in relation to the winding-up of companies shall be audited in such manner as the Governor may direct, and the official receiver shall make such returns and give such information as the Governor may direct.

Imp. § 233.

Rules and fees.

Rules and fees for winding-up and local registers and procedure. 220. 1. The Chief Justice with the approval of the Legislative Council may make general rules for carrying into effect the objects of this Ordinance so far as relates to the winding-up of companies, and to local registers and also rules of procedure for the purposes of this Ordinance including rules as to costs and fees. 2. There shall be paid in respect of proceedings under this Ordinance in relation to the winding-up of companies such fees and by such persons and in such manner as the Chief Justice with the approval of the Legislative Council may direct. 3. The authority having power to make rules or give directions under this section may, by any such rules or directions, repeal, alter, or amend any rules and directions, which are in force at the commencement of this Ordinance.

Imp. § 237.

Subject to this Ordinance fees and costs to assimilate to those in original jurisdiction of Court. 221. Subject to the provisions of this Ordinance with respect to fees and costs and to any rules made thereunder the same fees and percentages and solicitors' costs shall be payable as are provided for similar matters or proceedings in the original jurisdiction of the Court.

Removal of defunct companies from register.

Registrar may strike defunct company off register. 222. 1. Where the Registrar of Companies has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by registered post a letter inquiring whether the company is carrying on business or in operation. 2. If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register. 3. If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the *Gazette* and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved. 4. If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the Registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the Registrar may publish in the *Gazette* and send to the company a like notice as is provided in the last preceding subsection. 5. At the expiration of the time mentioned

in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice the company shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved. 6. If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on the application of the company or member or creditor may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off. 7. A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company or if there is no director or officer of the company whose name and address are known to the Registrar of Companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

Imp. § 242.

Part V. Registration Office and Fees.

Registration office. 223. 1. For the purposes of the registration of companies under this Ordinance, there shall be a registration office in the Colony. 2. The Governor may appoint such registrars, assistant registrars, clerks, and servants as he thinks necessary for the registration of companies under this Ordinance, and may make regulations with respect to their duties; and may remove any persons so appointed. 3. The salaries of the persons appointed under this section shall be fixed by the Governor. 4. The Governor may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies. 5. Any person may inspect the documents kept by the Registrar on payment of one dollar for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or certified copy thereof, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar on payment of five dollars for a certificate of incorporation or a copy or certified copy thereof, and of forty cents for each folio of a certified copy or extract of any other document. 6. A copy of or extract from any document kept and registered at the office for the registration of companies certified to be a true copy under the hand of the Registrar or an assistant registrar (whose official position it shall not be necessary to prove) shall in all legal proceedings be admissible in evidence as of equal validity with the original document. 7. Whenever any act is by this Ordinance directed to be done to or by the Registrar of Companies, it shall, until the Governor otherwise directs, be done to or by the existing Registrar of Companies, or in his absence to or by such person as the Governor may for the time being authorise.

Imp. § 243.

Fees. 224. 1. There shall be paid to the Registrar in respect of the several matters mentioned in Table B. in the first Schedule to this Ordinance the several fees therein specified, or such smaller fees as the Governor may from time to time direct. 2. All fees paid to the Registrar in pursuance of this Ordinance shall be paid to the Colonial Treasurer.

Imp. § 244.

Part VI. Application of Ordinance to Companies formed and registered under former Ordinances.

Application of Ordinance to companies formed under former Ordinances. 225. In the application of this Ordinance to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee as if the company had been formed and registered under this Ordinance as a company limited by shares, in the case of a company limited by guarantee as if the com-

pany had been formed and registered under this Ordinance as a company limited by guarantee; and in the case of a company other than a limited company, as if the company had been formed and registered under this Ordinance as an unlimited company: Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was in fact registered.

Imp. § 245.

Application of Ordinance to companies registered under former companies Ordinances. 226. This Ordinance shall apply to every company registered but not formed under the *Companies Ordinance, 1865*, or the *Companies (Registration) Ordinance, 1866*, in the same manner as it is hereinafter in this Ordinance declared to apply to companies registered but not formed under this Ordinance: Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the *Companies Ordinance, 1865*, or the *Companies (Registration) Ordinance, 1866*, as the case may be.

Imp. § 246.

Part VII. Companies authorised to register under this Ordinance.

Companies capable of being registered. 227. 1. With the exceptions and subject to the provisions mentioned and contained in this section: i) Any company consisting of seven or more members, which was formed for the purpose of carrying on the business of banking, and which was in existence at the time of the commencement of this Ordinance; ii) Any company consisting of seven or more members, which was in existence on the first day of May, eighteen hundred and sixty five; iii) Any company formed after the date aforesaid, whether before or after the commencement of this Ordinance in pursuance of any Ordinance other than this Ordinance, or being otherwise duly constituted by law, and consisting of seven or more members; may at any time register under this Ordinance as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up. 2. Provided as follows: a) A company having the liability of its members limited, and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section; b) A company having the liability of its members limited shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee; c) A company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares; d) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose; e) Where a company not having the liability of its members limited is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting; f) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount. 3. In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company. 4. A company registered under the *Companies Ordinance, 1865*, or the *Companies Registration Ordinance, 1866*, shall not be registered in pursuance of this section.

Imp. § 249.

Definition of joint stock company. 228. For the purposes of this Part of this Ordinance, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of

those shares or that stock, and no other persons; and such a company when registered with limited liability under this Ordinance shall be deemed to be a company limited by shares.

Imp. § 250.

Liability of bank of issue unlimited in respect of notes. 229. 1. A bank of issue registered under this Ordinance as a limited company shall not be entitled to limited liability in respect of its notes; and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited; but if, in the event of the company being wound up, the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors, then the members after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets. 2. For the purposes of this section the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder. 3. Any bank of issue registered under this Ordinance as a limited company may state on its notes that the limited liability does not extend to its notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

Imp. § 251.

Requirements for registration by joint stock companies. 230. Before the registration in pursuance of this Part of this Ordinance of a joint stock company there shall be delivered to the Registrar the following documents (that is to say): 1. A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number; 2. A copy of any Act of Parliament, Ordinance, royal charter, letters patent, deed of settlement, contract of copartnership, cost book regulations, or other instrument constituting or regulating the company; and 3. If the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say): a) The nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists; b) The number of shares taken and the amount paid on each share; c) The name of the company, with the addition of the word "limited" as the last word thereof; and d) In the case of a company intended to be registered as company limited by guarantee the resolution declaring the amount of the guarantee.

Imp. § 252.

Requirements for registration by other than joint stock companies. 231. Before the registration in pursuance of this Part of this Ordinance of any company not being a joint stock company, there shall be delivered to the Registrar: 1. A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and 2. A copy of any Act of Parliament, Ordinance, letters patent, deed of settlement, contract of copartnership, cost book regulations, or other instrument constituting or regulating the company; and 3. In the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Imp. § 253.

Authentication of statements of existing companies. 232. The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

Imp. § 254.

Registrar may require evidence as to nature of company. 233. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

Imp. § 255.

On registration of banking company with limited liability, notice to be given to customers. 234. 1. Where a banking company which was in existence at the time of the commencement of this Ordinance proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to

register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address. 2. If the company omits to give the notice required by this section, than as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Imp. § 256.

Exemption of certain companies from payment of fees. 235. No fees shall be charged in respect of the registration in pursuance of this Part of this Ordinance of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Ordinance, Act of Parliament or letters patent.

Imp. § 257.

Addition of "limited" to name. 236. When a company registers in pursuance of this Part of this Ordinance with limited liability, the word "limited" shall form and be registered as part of its name and any Chinese equivalent of its name which the company may use shall contain the Chinese characters 有限公司.

Imp. § 258.

Certificate of registration of existing companies. 237. On compliance with the requirements of this Part of this Ordinance with respect to registration, and on payment of such fees, if any, as are payable under Table B. in the first Schedule to this Ordinance, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Ordinance, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated and shall have perpetual succession and a common seal with power to hold lands.

Imp. § 259.

Vesting of property on registration. 238. All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this Part of this Ordinance shall on registration pass to and vest in the company as incorporated under this Ordinance for all the estate and interest of the company therein.

Imp. § 260.

Saving for existing liabilities. 239. Registration of a company in pursuance of this Part of this Ordinance shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Imp. § 261.

Continuation of existing actions. 240. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Ordinance are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

Imp. § 262.

Effect of registration. 241. When a company is registered in pursuance of this Part of this Ordinance: i) All provisions contained in any Act of Parliament, Ordinance, deed of settlement, contract of copartnership, cost book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would if the company had been formed under this Ordinance, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles; ii) All the provisions of this Ordinance shall apply to the company, and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Ordinance, subject as follows (that is to say): a) The regulations in Table

A. in the first Schedule to this Ordinance shall not apply unless adopted by special resolution; b) The provisions of this Ordinance relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered; c) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament or Ordinance relating to the company; d) Subject to the provisions of this section the company shall not have power, without the sanction of the Governor, to alter any provision contained in any letters patent relating to the company; e) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company; f) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid; and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Ordinance with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply: iii) The provisions of this Ordinance with respect to: a) The registration of an unlimited company as limited: b) The powers of an unlimited company on registration as a limited company to increase the nominal amount of its shares capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding-up; c) The power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding-up; shall apply notwithstanding any provisions contained in any Act of Parliament, Ordinance, royal charter, deed of settlement, contract of copartnership, cost book regulations, letters patent, or other instrument constituting or regulating the company; iv) Nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of copartnership, cost book regulations, letters patent, or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Ordinance have been required to be contained in the memorandum and are not authorised to be altered by this Ordinance; v) Nothing in this Ordinance shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, Ordinance, deed of settlement, contract of copartnership, letters patent, or other instrument constituting or regulating the company, be vested in the company.

Imp. § 263.

Power to substitute memorandum and articles for deed of settlement. 242. 1. Subject to the provisions of this section, a company registered in pursuance of this Part of this Ordinance may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement. 2. The provisions of this Ordinance with respect to confirmation by the Court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications: a) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the Registrar of Companies a printed copy of the substituted memorandum and articles; and b) On the registration of the alteration being certified by the Registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Ordinance with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company. 3. An alteration under this section may be made either with or without any alteration of the objects of the company under this Ordinance. 4. In this section the expression "deed of settlement" includes any contract of copartnership or other instrument constituting or regulating the company, not being an Ordinance, Act of Parliament, a royal charter, or letters patent.

Imp. § 264.

Power of Court to stay or restrain proceedings. 243. The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Ordinance where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Imp. § 265.

Actions stayed on winding-up order. 244. Where an order has been made for winding up a company registered in pursuance of this Part of this Ordinance no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

Imp. § 266.

Part VIII. Winding-Up of Unregistered Companies.

Meaning of unregistered company. 245. For the purposes of this Part of this Ordinance the expression "unregistered company" shall not include a railway company incorporated by Ordinance nor a company registered under the *Companies Ordinance, 1865*, or under the *Companies (Registration) Ordinance, 1866*, or under this Ordinance, but, save as aforesaid, shall include any partnership, association, or company consisting of more than seven members.

Imp. § 267.

Winding up of unregistered companies. 246. 1. Subject to the provisions of this Part of this Ordinance any unregistered company may be wound up under this Ordinance and all the provisions of this Ordinance with respect to winding-up shall apply to an unregistered company, with the following exceptions and additions: i) The principal place of business, in the Colony, of an unregistered company shall for all the purposes of the winding-up be deemed to be the registered office of the company; ii) No unregistered company shall be wound up under this Ordinance voluntarily or subject to supervision; iii) The circumstances in which an unregistered company may be wound up are as follows (that is to say): a) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs; b) If the company is unable to pay its debts; c) If the Court is of opinion that it is just and equitable that the company should be wound up; iv) An unregistered company shall, for the purpose of this Ordinance, be deemed to be unable to pay its debts: a) If a creditor, by assignment or otherwise, to whom the company is indebted in a ¹⁾ sum exceeding five hundred dollars then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor; b) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same; c) If execution or other process issued on a judgment, decree, or order obtained in any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied; d) If it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts. 2. Nothing in this Part of this Ordinance shall effect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being

¹⁾ *Sic*; obviously to be omitted.

wound up as a company or as an unregistered company, under any enactment repealed by this Ordinance, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Ordinance.

Imp. § 268.

Contributories in winding up of unregistered company. 247. 1. In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding-up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid. 2. In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Ordinance with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories and to the liabilities of husbands and wives respectively, shall apply.

Imp. § 269.

Power of Court to stay or restrain proceedings. 248. The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Imp. § 270.

Actions stayed on winding-up order. 249. Where an order has been made for winding-up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

Imp. § 271.

Directions as to property in certain cases. 250. If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by the winding-up order, or by any subsequent order, direct that all or any part of the property, real and personal (including things in action), belonging to the company, or to trustees on its behalf, is to vest in the liquidator, by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any action, or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Imp. § 272.

Provisions of Part of Ordinance cumulative. 251. The provisions of this Part of this Ordinance with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Ordinance contained with respect to winding up companies by the Court, and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Ordinance; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Ordinance, and then only to the extent provided by this Part of this Ordinance.

Imp. § 273.

Part IX. Companies established outside the Colony.

Requirements as to companies established outside the Colony. 252. 1. Every company incorporated outside the Colony which shall establish a place of business within the Colony, shall within one month from the establishment of the place of business file with the Registrar of Companies: a) A certified copy of the charter, statutes, or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation in the English language thereof; b) A list of the directors of the company; c) The names and addresses of some one

or more persons resident in the Colony authorised to accept on behalf of the company service of process and any notices required to be served on the company; and, in the event of any alteration being made in any such instrument or in the directors or in the names or addresses of any such persons as aforesaid, the company shall within the prescribed time file with the Registrar a notice of the alteration. 2. Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed. 3. Every company to which this section applies shall in every year file with the Registrar such a statement in the form of a balance sheet as would, if it were a company formed and registered under this Ordinance and having a share capital, be required under this Ordinance to be included in the annual summary. 4. Every company to which this section applies, and which uses the word "Limited" or the Chinese characters 有限公司, as part of its name, shall: a) In every prospectus inviting subscriptions for its shares or debentures in the Colony state the country in which the company is incorporated; and b) Conspicuously exhibit on every place where it carries on business in the Colony the name of the company and the country in which the company is incorporated; and c) Have the name of the company and of the country in which the company is incorporated mentioned in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company. 5. If any company to which this section applies fails to comply with any of the requirements of this section the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred dollars, or in the case of a continuing offence, fifty dollars for every day during which the failure continues. 6. For the purposes of this section: The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation; The expression "place of business" includes a share transfer or share registration office; The expression "director" includes any person occupying the position of director, by whatever name called; and The expression "prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of the company. 7. There shall be paid to the Registrar for registering any document required by this section to be filed with him a fee of three dollars or such smaller fee as may be prescribed.

Imp. § 274.

Power of companies incorporated outside the Colony to hold lands. 253. 1. No company incorporated outside the Colony may hereafter require immoveable property unless: a) It is empowered by its constitution to acquire immoveable property; and b) It shall have filed with the Registrar of Companies the documents and particulars specified in paragraphs a, b and c of subsection 1 of section 252; and c) It shall have obtained the special consent of the Governor-in-Council. 2) Subject to the provisions of this section any company incorporated outside the Colony shall have power to acquire hold and dispose of lands in the Colony as if it were a company incorporated under this Ordinance.

Imp. § 275.

Part X. Supplemental.

Legal proceedings, offences, etc.

Prosecution of offences. 254. All offences under this Ordinance made punishable by any fine may be prosecuted under the *Magistrates Ordinance, 1890*.

Imp. § 276.

Applications of fines. 255. The magistrate imposing any fine under this Ordinance may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Ordinance shall notwithstanding anything in any other Ordinance be paid to the Colonial Treasurer.

Imp. § 277.

Costs in actions by certain limited companies. 256. Where a limited company is plaintiff in any action or other legal proceeding, any Judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in

his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Imp. § 278.

Penalty for failure to pay fine. 257. 1. If any company fails to pay the whole or any part of any fine or penalty imposed by a magistrate under this Ordinance within one month of the day on which the said fine or penalty was imposed, the Registrar of Companies shall publish in the *Gazette* and send to the company by post a notice that at the expiration of two months from the date of such notice the name of the company mentioned therein will, unless the said fine or penalty be sooner paid, be struck off the register and the company will be dissolved. 2. At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice the company shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved. 3. If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on the application of the company or member or creditor may, if satisfied that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off. 4. A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the Registrar of Companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum. Provided that nothing in this section shall affect any other legal method of enforcing fines or penalties imposed by a magistrate.

Power of Court to grant relief in certain cases. 258. If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the Court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think proper.

Imp. § 279.

Penalty for false statement. 259. If any person in any return report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Ordinance specified in the fourth Schedule hereto, wilfully makes a statement false in any material particular knowing it to be false, he shall be guilty of a misdemeanour.

Imp. § 281.

Penalty for improper use of word "Limited". 260. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, or under any name or title of which the Chinese characters 有限公司 form part, that person or those persons, shall, unless duly incorporated with limited liability, be liable to a fine not exceeding fifty dollars for every day upon which that name or title has been used.

Imp. § 282.

Interpretation, etc.

Interpretation. 261. In this Ordinance, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say): "Existing company" means a company formed and registered under the *Companies Ordinance, 1865*, or under the *Companies Registration Ordinance, 1866*; "Company" means a company formed and registered under this Ordinance or an existing company "Articles" means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in First Schedule to this Ordinance; "Memor-

andum" means the memorandum of association of a company, as originally framed or as altered in pursuance of the provisions of this Ordinance; "Document" includes summons, notice, order, and other legal process, and registers; "Share" means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied; "Debenture" includes debenture stock; "Books and papers" and "books or papers" include accounts, deeds, writings, and documents; "The Registrar of Companies," or, when used in relation to registration of companies, "the Registrar," means the Registrar or other officer performing under this Ordinance the duty of registration of companies. "The Court" used in relation to a company means the Supreme Court of Hongkong and includes any Judge thereof; The "Full Court" means the Chief Justice and the Puisne Judge of the Supreme Court, sitting together; "General rules" means general rules made under this Ordinance relating to the winding-up of companies, prescribed by general rules, and as respects the other provisions of this Ordinance, prescribed by the Governor, or the Governor-in-Council; "Director" means any person occupying the position of director by whatever name called and includes a general manager, manager and any person on a consulting or advisory committee, and any person who has the control of its affairs in the absence of a board of directors or of such consulting or advisory committee; "Prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company; "Solicitor" has the same meaning as in the *Legal Practitioners Ordinance, 1871*.

Imp. § 285.

Repeal of ordinances and transitional provisions.

Repeal of Ordinances and savings. 262. The following Ordinances are hereby repealed: *The Companies Ordinance, 1865. The Companies (Registration) Ordinance, 1866. The Companies (Local Registers) Ordinance, 1907. The Foreign Corporations Land Ordinance, 1908. The Companies Amendment Ordinance, 1908. and The Companies (Local Registers) Amendment Ordinance, 1909.* Provided that the repeal shall not affect: a) The incorporation of any company registered under any enactment hereby repealed; nor b) Table A in the first Schedule annexed to the *Companies Ordinance, 1865*, or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section one hundred and nineteen of that Ordinance) so far as the same applies to any company existing at the commencement of this Ordinance; nor c) The rights which have been acquired by any foreign corporation under the *Foreign Corporations Land Ordinance, 1908*.

Imp. § 286.

Saving of pending proceedings for winding-up. 263. The provisions of this Ordinance with respect to winding-up shall not apply to any company of which the winding-up has commenced before the commencement of this Ordinance, but every such company shall be wound up in the same manner and with the same incidents as if this Ordinance had not passed, and, for the purposes of the winding-up, the Ordinance or Ordinances under which the winding-up commenced shall be deemed to remain in full force.

Imp. § 287.

Saving of deeds. 264. Every conveyance, mortgage, or other deed, made before the commencement of this Ordinance in pursuance of any enactment hereby repealed, shall be of the same force as if this Ordinance had not passed, and for the purposes of that deed the repealed enactment shall be deemed to remain in full force.

Imp. § 288.

Former registration offices, registers, official receivers, etc., continued. 265. 1. The office existing at the commencement of this Ordinance for registration of companies shall be continued as if it had been established under this Ordinance. 2. Registers of companies kept in such existing office shall respectively be deemed part of the registers of companies to be kept under this Ordinance. 3. The existing Registrar of companies shall during the pleasure of the Governor hold the office hitherto held by him subject to any regulations of the Governor with regard to the execution of his duties.

Imp. § 289.

Saving for existing rules of procedure etc. 266. Until revoked and except as varied under the powers of this Ordinance, the general rules and orders, and scales of fees, under the Companies Ordinances, in force at the commencement of this Ordinance

with respect to the procedure for reduction of capital, and to winding-up companies, and the practice and procedure for winding-up companies in force at the commencement of this Ordinance, shall so far as they are not inconsistent with this Ordinance, continue in force.

Imp. § 290.

Substitution of provisions of this Ordinance for provisions of repealed Ordinances.

267. Where any enactment repealed by this Ordinance is mentioned or referred to in any document, that document shall be read as if the corresponding provision (if any) of this Ordinance were therein mentioned or referred to and substituted for the repealed enactment.

Imp. § 291.

Saving for Life and Fire Insurance Companies Ordinances. **268.** Nothing in this Ordinance shall affect the provisions of the *Life Insurance Companies Ordinances, 1907 and 1909*, the *Fire Insurance Companies Ordinance, 1908*, or the *Fire Insurance Amendment Ordinance, 1908*, except that references in those Ordinances to any provision of the *Companies Ordinance, 1865*, shall be read as references to the corresponding provision of this Ordinance.

Commencement of Ordinance. **269.** This Ordinance shall come into operation on the 1st day of January, 1912.

Imp. § 296.

Schedules.

First Schedule.

Table A. Regulations for Management of a Company Limited by Shares.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies Ordinance, 1911, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and vice versâ, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section of the Companies Ordinance, 1911, if, and so far as, those restrictions are binding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred, or other special rights, or such restrictions whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 87 and 90 of the Companies Ordinance, 1911, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding fifty cents, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists, is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five dollars per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and transmission of shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve: I, A. B. of _____ in consideration of the sum of \$ _____ paid to me by C. D. of _____ (hereinafter called "the said transferee") do hereby transfer to the said transferee the share [or shares] numbered _____ in the undertaking called the _____ Company Limited, to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution thereof: and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid. As witness our hands the _____ day of _____

Witness to the signatures of, &c.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless: a) a fee not exceeding

two dollars is paid to the company in respect thereof, and b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share re-registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

23. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of nonpayment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

29. A statutory declaration in writing that the declarant is a director of the company and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of shares into stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction reconvert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall

be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Share warrants.

35. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons, or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

36. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantage as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

Alteration of capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

44. The company may, by special resolution: a) Consolidate and divide its share capital into shares of larger amount than its existing shares; b) By subdivision of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph d of subsection 1 of section 42 of the Companies Ordinance, 1911; c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person; d) Reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

General meetings.

45. The statutory general meeting of the company shall be held within the period required by section 66 of the Companies Ordinance, 1911.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 67 of the Companies Ordinance, 1911. If at any time there are not in the place where the company has its head office sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Proceedings at general meeting.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve: Company, Limited. "I of being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the day of and at any adjournment thereof".

Signed this day of

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 74 of the Companies Ordinance, 1911.

Powers and duties of directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Companies Ordinance, 1911, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Ordinance, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Companies Ordinance, 1911, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it, and to keeping a register of the directors, and to

sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books provided for the purpose: a) of all appointments of officers made by the directors; b) of the names of the directors present at each meeting of the directors and of any committee of the directors; c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors, and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of directors.

77. The office of director shall be vacated, if the director: a) ceases to be a director by virtue of section 74 of the Companies Ordinance, 1911; or b) holds any other office of profit under the company except that of managing director or manager; or c) becomes bankrupt; or d) is found lunatic or becomes of unsound mind; or e) is concerned or participates in the profits of any contract with the company: Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director: but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

Rotation of directors.

78. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being, if their number is not three or a multiple of three, then the number nearest to one-third, shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of directors.

87. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes of the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings: if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and reserve.

95. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to be justified by the profits of the company.

97. No dividend shall be paid otherwise than out of profits.

98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purpose of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint holders of any share one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner herein-after mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Audit.

103. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and thirteen and one hundred and fourteen of the Companies Ordinance, 1911, or any statutory modification thereof for the time being in force.

Notices.

104. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the place where the company has its head office) to the address, if any, in the place where the company has its head office, supplied by him to the company for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

105. If a member has no registered address in the place where the company has its head office and has not supplied to the company an address in the place where the company has its head office for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

106. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

107. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt or by any like description, at the address, if any, in the place where the company has its head office supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

108. Notice of every general meeting shall be given in some manner hereinbefore authorised to (a) every member of the company (including bearers of share warrants) except those members who (having no registered address in the place where the company has its head office) have not supplied to the company an address in the place where the company has its head office for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

Form B. Table of Fees to be paid to the Registrar of Companies.

| <i>1. By a company having a share capital.</i> | | \$ | c. |
|--|--|--------|----|
| For registration of a company whose nominal share capital does not exceed \$ 10,000 | | 50.00 | |
| For registration of a company whose nominal share capital exceeds \$ 10,000, the above fee of \$ 50 with the following additional fees, regulated according to the amount of nominal share capital (that is to say): | | | |
| For every \$ 5,000 of nominal share capital, or part of \$ 5,000 up to \$ 25,000 | | 10.00 | |
| For every \$ 10,000 of nominal share capital, or part of \$ 10,000 after the first \$ 25,000 up to \$ 500,000 | | 3.00 | |
| For every \$ 10,000 of nominal share capital, or part of \$ 10,000 after the first \$ 500,000 | | — | 50 |
| For registration of any increase of share capital made after the first registration of the company, the same fees per \$ 10,000 or part of a \$ 10,000 as would have been payable if the increased share capital had formed part of the original share capital at the time of registration: | | | |
| Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than \$ 300, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration. | | | |
| For registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance the same fee as is charged for registering a new company. | | | |
| For registering any document by this Ordinance required or authorised to be registered, other than the memorandum or the abstract required to be filed with the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the liquidator in a winding-up | | 3.00 | |
| For making a record of any fact by this Ordinance required or authorised to be recorded by the Registrar | | 3.00 | |
| <i>2. By a company not having a share capital.</i> | | | |
| For registration of a company whose number of members, as stated in the articles, does not exceed 20 | | 50.00 | |
| For registration of a company whose number of members, as stated in the articles, exceeds 20, but does not exceed 100. | | 100.00 | |
| For registration of a company whose number of members, as stated in the articles, exceeds 100, but is not stated to be unlimited, the above fee of \$ 100, with an additional \$ 10 for every 50 members or less number than 50 members after the first 100. | | | |
| For registration of a company in which the number of members is stated in the articles to be unlimited | | 300.00 | |
| For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of that increase | | 10.00 | |
| Provided that no company shall be liable to pay on the whole a greater fee than \$ 300 in respect of its number of members, taking into account the fee paid on the first registration of the company. | | | |
| For registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance, the same fee as is charged for registering a new company. | | | |
| For registering any document by this Ordinance required or authorised to be registered, other than the memorandum or the abstract required to be filed with the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the liquidator in a winding-up | | 3.00 | |
| For making a record of any fact by this Ordinance required or authorised to be recorded by the Registrar | | 3.00 | |

Form C. Form of Statement to be published by Banking and Insurance Companies, and Deposit, Provident, or Benefit Societies.

The¹) share capital of the company is _____, divided into
 shares of _____ each.
 The number of shares issued is _____
 Calls to the amount of _____ dollars per share have been made, under which the
 sum of _____ dollars has been received.
 The liabilities of the company on the first day of January (or July) were:
 Debts owing to sundry persons by the company:
 On judgment, \$ _____
 On specialty, \$ _____
 On notes or bills, \$ _____
 On simple contracts, \$ _____
 On estimated liabilities, \$ _____
 The assets of the company on that day were:
 Government securities (*stating them*), \$ _____
 Bills of exchange and promissory notes, \$ _____
 Cash at the bankers, \$ _____
 Other securities, \$ _____

Second Schedule.

The Companies Ordinance, 1911.

Statement in lieu of Prospectus

_____ filed by _____ Limited
 pursuant to section _____ of the Companies Ordinance, 1911.

Presented for filing by _____

The Companies Ordinance, 1911.

Statement in lieu of prospectus.

Limited.

| | |
|---|---|
| The nominal share capital of the company. | \$ _____ |
| Divided into | Shares of \$ _____ each. " " " " " " |
| Names, descriptions, and addresses of directors or proposed directors. | _____ |
| Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment. | _____ |
| Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash. | 1. _____ shares of \$ _____ fully paid. 2. _____ shares upon which \$ _____ per share credited as paid. |
| The consideration for the intended issue of those shares and debentures. | 3. _____ debentures \$ _____ 4. Consideration. |
| Names and addresses of ²) vendors of property purchased or acquired, or proposed to be ³) purchased or acquired by the company. | _____ |
| Amount (in cash, shares, or debentures) payable to each separate vendor. | _____ |
| Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill. | Total purchase price \$ _____ Cash \$ _____ Shares \$ _____ Debentures \$ _____ Goodwill \$ _____ |

¹) If the company has no share capital the portion of the statement relating to capital and shares must be omitted. — ²) For definition of vendor, see section 83 (2) of the Companies Ordinance, 1911. — ³) See section 83 (3) of the Companies Ordinance, 1911.

| | |
|---|---|
| The nominal share capital of the company. | \$ |
| Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company, or Rate of the commission. | Amount paid. Amount payable. Rate per cent. |
| Estimated amount of preliminary expenses. | \$ |
| Amount paid or intended to be paid to any promoter. Consideration for such payment. | Name of promoter. Amount \$ Consideration: |
| Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement). | |
| Time and place at which such contracts or copies thereof may be inspected. | |
| Names and addresses of the auditors of the company (if any). | |
| Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company. | |
| Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports. | Nature of the provisions. |

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)
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Third Schedule.

Form A. Memorandum of Association of a Company limited by Shares.

- 1st. The name of the company is "The Eastern Steam Packet Company Limited."
- 2nd. The registered office of the company will be situate in Hongkong.
- 3rd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."
- 4th. The liability of the members is limited.
- 5th. The share capital of the company is two million dollars divided into one thousand shares of two thousand dollars each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

| Names, addresses, and descriptions of subscribers. | | Number of shares taken by each subscriber. |
|--|----------|---|
| 1. John Jones of | merchant | 200 |
| 2. John Smith of | - | 25 |
| 3. Thomas Green of | - | 30 |
| 4. John Thompson of | - | 40 |
| 5. Caleb White of | - | 15 |
| 6. Andrew Brown of | - | 5 |
| 7. Caesar White of | - | 10 |
| Total shares taken | | 325 |
| Dated the | day of | 19 |
| Witness to the above signatures, A. B., No. , Queen's Road, Victoria, Hongkong. | | |

Form B. Memorandum and Articles of Association of a Company limited by Guarantee, and not having a Share Capital.

Memorandum of association.

- 1st. The name of the company is "The Hongkong Mutual Marine Association, Limited."
- 2nd. The registered office of the company will be situate in Hongkong.
- 3rd. The objects for which the company is established are, "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."
- 4th. The liability of the members is limited.
- 5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges, and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one hundred dollars.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

| Names, addresses, and descriptions of subscribers. | |
|--|----------|
| 1. John Jones of | merchant |
| 2. John Smith of | |
| 3. Thomas Green of | |
| 4. John Thompson of | |
| 5. Caleb White of | |
| 6. Andrew Brown of | |
| 7. Caesar White of | |
| Dated the | day of |
| Witness to the above signatures, A. B., No. , Queen's Road, Victoria, Hongkong. | |

Articles of Association to accompany preceding Memorandum of Association.

Number of members.

1. The company, for the purpose of registration, is declared to consist of five hundred members.
2. The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to convene a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members, may themselves convene a meeting.

Proceedings at general meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say), if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened on the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned sine die.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot he may vote by his committee, curator bonis, or other legal curator.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

23. No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation. The instrument appointing him shall be deposited

at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form:

Company, Limited.

of
being
a member of the Company, Limited, hereby appoint of
as my proxy, to vote for me and on my behalf at the (ordinary or extraordinary as the case may be) general meeting of the company to be held on the day of and
at any adjournment thereof.

Signed this day of

Directors.

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed the subscribers of the memorandum of association shall for all the purposes of the Companies Ordinance, 1911, be deemed to be directors.

Powers of directors.

27. The business of the company shall be managed by the directors who may exercise all such powers of the company as are not by the Companies Ordinance, 1911, or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Election of directors.

28. The directors shall be elected annually by the company in general meeting.

Business of company.

(Here insert rules as to mode in which business of insurance is to be conducted.)

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections 113 and 114 of the Companies Ordinance, 1911, or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders," and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally, or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names, addresses, and descriptions of subscribers.

- | | |
|---------------------|-----------|
| 1. John Jones of | merchant. |
| 2. John Smith of | |
| 3. Thomas Green of | |
| 4. John Thompson of | |
| 5. Caleb White of | |
| 6. Andrew Brown of | |
| 7. Caesar White of | |

Dated the day of 1911.

Witness to the above signatures,

A. B., No. , Queen's Road, Victoria, Hongkong.

Form C. Memorandum and Articles of Association of a Company limited by Guarantee, and having a Share Capital.

Memorandum of association.

- 1st. The name of the company is "The Highland Hotel Company, Limited."
- 2nd. The registered office of the company will be situate in Hongkong.
- 3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of the New Territories, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges, and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding two hundred dollars.

6th. The share capital of the company shall consist of five hundred thousand dollars, divided into five thousand shares of one hundred dollars each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

| Names, addresses and descriptions of subscribers. | Number of shares taken by each subscriber |
|---|--|
| 1. John Jones of | 200 |
| 2. John Smith of | 25 |
| 3. Thomas Green of | 30 |
| 4. John Thompson of | 40 |
| 5. Caleb White of | 15 |
| 6. Andrew Brown of | 5 |
| 7. Caesar White of | 10 |
| Total shares taken | 325 |

Dated the day of 19 .

Witness to the above signatures,

A. B., No. , Queen's Road, Victoria, Hongkong.

Articles of association to accompany preceding memorandum of association.

1. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.

2. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

3. All the articles of Table A of the Companies Ordinance, 1911, shall be deemed to be incorporated with these articles and to apply to the company.

Names, addresses, and description of subscribers.

| | |
|---------------------|-----------|
| 1. John Jones of | merchant. |
| 2. John Smith of | |
| 3. Thomas Green of | |
| 4. John Thompson of | |
| 5. Caleb White of | |
| 6. Andrew Brown of | |
| 7. Caesar White of | |

Dated the day of 19 .

Witness to the above signatures,

A. B., No. , Queen's Road, Victoria, Hongkong.

Form D. Memorandum and Articles of Association of an unlimited Company having a Share Capital.

Memorandum of association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situate in Hongkong.

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of Hongkong, is the sole patentee."

We the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Description of Subscribers.

Number of
shares taken
by each
subscriber

| | |
|------------------------------|----|
| 1. John Jones of | 3 |
| 2. John Smith of | 2 |
| 3. Thomas Green of | 1 |
| 4. John Thompson of | 2 |
| 5. Caleb White of | 2 |
| 6. Andrew Brown of | 1 |
| 7. Abel Brown of | 1 |
| Total shares taken | 12 |

Dated the day of 19 .

Witness to the above signatures,

A. B., No. , Queen's Road, Victoria, Hongkong.

Articles of association to accompany the preceding memorandum of association.

1. The share capital of the company is twenty thousand dollars, divided into twenty shares of one thousand dollars each.

2. All the articles of Table A. of the Companies Ordinance, 1911, shall be deemed to be incorporated with these articles, and to apply to the company.

Names, addresses, and description of subscribers.

| | |
|---------------------|-----------|
| 1. John Jones of | merchant. |
| 2. John Smith of | |
| 3. Thomas Green of | |
| 4. John Thompson of | |
| 5. Caleb White of | |
| 6. Andrew Brown of | |
| 7. Abel Brown of | |

Dated the day of 19 .

Witness to the above signatures,

A. B., No. , Queen's Road, Victoria, Hongkong.

Form E. As required by Part II. of the Ordinance.Summary of Share Capital and Shares of the Company, Limited, made up to
the day of 19 (being the fourteenth day after the date of the first
ordinary general meeting 19).Nominal share capital \$ { shares of \$ each.
divided into¹⁾ { shares of \$ each.Total number of shares taken up¹⁾ to the
day of 19 (which
number must agree with the total shown in
the list as held by existing members).

Number of shares issued subject to payment wholly in cash. . .

Number of shares issued as fully paid up otherwise than in cash . .

Number of shares issued as partly paid up to the extent of
per share otherwise than in cash } \$.²⁾ There has been called up on each of shares \$

There has been called up on each of shares \$

²⁾ There has been called up on each of shares \$³⁾ Total amount of calls received, including payments on application
and allotment } \$.Total amount (if any) agreed to be considered as paid on
shares which have been issued as fully paid up otherwise than in
cash } \$.¹⁾ When there are shares of different kinds or amounts (e.g. Preference and Ordinary, or \$100 or \$50) state the numbers and nominal values separately. — ²⁾ Where various amounts have been called or there are shares of different kinds state them separately. —³⁾ Include what has been received on forfeited as well as on existing shares.

1) State the aggregate number of shares forfeited (if any). — 2) The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up. — 3) The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer. — 4) When the shares are of different classes these columns may be subdivided so that the number of each class held or transferred may be shown separately.

*Fourth Schedule.**Provisions referred to in Section 259 of the Ordinance.***Provisions relating to:**

| | |
|---|---------------|
| The conclusiveness of certificates of incorporation; | s. 18. |
| Restrictions on appointments or advertisement of directors; | s. 73. |
| Restrictions on commencement of business; | s. 89. |
| Returns to allotments; | s. 90. |
| Statutory meetings; | s. 66. |
| The particulars as to directors and mortgage debt and the statement in the form of a balance sheet in the annual summary; | s. 27. |
| The appointment and remuneration, and powers and duties, of auditors; | ss. 113, 114. |
| Obligations of companies where no prospectus is issued; | ss. 113, 114. |
| Registration of mortgages and charges; | s. 84. |
| Filing of accounts of receiver and manager; | s. 95. |
| Notice by liquidator in voluntary winding-up of his appointment; | s. 97. |
| Rights of creditors in a voluntary winding-up; | s. 180. |
| Requirements as to companies established outside the Colony. | s. 181. |
| | s. 252. |

b) No. 5 of 1891. An Ordinance to amend the Law in respect of the Sale of Shares in Companies registered under the Companies Ordinance, 1865, and the Companies Ordinance, 1866, and in other Joint Stock Companies (30th July, 1891).

Short title. 1. This Ordinance may be cited as the *Companies (Sale of Shares) Ordinance, 1891.*

This Ordinance originally constituted Ord. No. 15 of 1891.

Avoidance of contract for sale and purchase of shares unless numbers of shares are set forth in contract. 2. 1. Every contract, agreement, and token of sale and purchase which shall, from and after the first day of October, 1891, be made or entered into for the sale or transfer, or purporting to be for the sale or transfer, of any share or shares or of any stock or other interest in any joint stock company constituted under or regulated by the provisions of any Act of Parliament, local Ordinance, Royal Charter, or letters patent, issuing shares or stock transferable by any deed or written instrument, shall be null and void to all intents and purposes whatsoever, unless such contract, agreement, or token shall set forth and designate in writing such shares, stock, or interest by the respective numbers by which the same are distinguished at the making of such contract, agreement, or token on the register or books of such joint stock company as aforesaid, or, where there is no such register of shares or stock by distinguishing numbers, then unless such contract, agreement, or token shall set forth the person or persons in whose name or names such shares, stock, or interest shall, at the time of making such contract, stand as the registered proprietor thereof in the books of such joint stock company. 2. Every person, whether principal, broker, or agent, who wilfully inserts in any such contract, agreement, or token any false entry of such numbers, or any name or names other than that or those of the person or persons in whose name or names such shares, stock, or interest shall stand as aforesaid, shall, on conviction before a magistrate, be liable to a penalty not exceeding two hundred dollars, or to imprisonment, with or without hard labour, for any term not exceeding six months.

Imp. 30 & 31 Vic. c. 29, § 1. The Imperial Act was limited to the purchase of shares or stock in joint stock banking companies.

Sale of Goods.

No. 4 of 1896. An Ordinance to codify the Law relating to the Sale of Goods (1st August, 1896).¹⁾

Short title. 1. This Ordinance may be cited as the *Sale of Goods Ordinance, 1896.*

Imp. § 64.

Interpretation of terms. 2. 1. In this Ordinance, unless the context or subject-matter otherwise requires: "Action" includes suit, counterclaim, and set-off;

¹⁾ The references (Imp.) are to the *Imperial Sale of Goods Act, 1893*, (56 & 57 Vic. c. 71)

"Buyer" means a person who buys or agrees to buy goods; "Contract of sale" includes an agreement to sell as well as a sale; "Delivery" means voluntary transfer of possession from one person to another; "Document of title to goods" includes any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented; "Fault" means wrongful act or default; "Future goods" mean goods to be manufactured or acquired by the seller after the making of the contract of sale; "Goods" include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale; "Plaintiff" includes a defendant counterclaiming; "Property" means the general property in goods, and not merely a special property; "Quality of goods" includes their state or condition; "Sale" includes a bargain and sale as well as a sale and delivery; "Seller" means a person who sells or agrees to sell goods; "Specific goods" mean goods identified and agreed upon at the time a contract of sale is made; "Warranty" means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated. 2. A thing is deemed to be done "in good faith" within the meaning of this Ordinance when it is in fact done honestly, whether it is done negligently or not. 3. A person is deemed to be insolvent within the meaning of this Ordinance who either has ceased to pay his debts in the ordinary course of business or can not pay his debts as they become due, whether he has committed an act of bankruptcy or not and whether he has been adjudged bankrupt or not. 4. Goods are in a "deliverable state" within the meaning of this Ordinance when they are in such a state that the buyer would, under the contract, be bound to take delivery of them.

Imp. § 62.

Part I. Formation of the Contract.

Contract of sale.

3. = Imp. § 1.

Imp. § 1. As to law governing contracts of sale made abroad, see *Carlowitz & Co. v. The Sun Shing Firm*, (1905), 1 H. K. L. R. 51.

4. = Imp. § 2.

Formalities of contract.

5. = Imp. § 3, except: "Ordinance" is substituted for "Act," and "enactment" for "statute."

6. = Imp. § 4 (1—3), except: in (1) "one hundred dollars" is substituted for "ten pounds," "accepts" for "shall accept," "receives" for "receive," "gives" for "give," and "is made" for "be made;" in (3) "is an acceptance" is substituted for "be an acceptance."

Subject-matter of contract.

7. = Imp. § 5, except: in (1) "Ordinance" is substituted for "Act."

8—9. = Imp. §§ 6—7.

Price.

10—11. = Imp. §§ 8—9.

Conditions and warranties.

12. = Imp. § 10.

13. = Imp. § 11 (1, 3), except: in (1) "in England or Ireland" is omitted; "not a right to reject" is substituted for "not to a right to reject," and "there is a term of the contract" for "there be a term of the contract."

14. = Imp. § 12.

15. = Imp. § 13, except: "sale is by sample" is substituted for "sale be by sample."

16. = Imp. § 14, except: in introductory paragraph "Ordinance" is substituted for "Act" and "enactment" for "statute;" in (1) and (2) "is the manufacturer" is substituted for "be the manufacturer;" in (4) "Ordinance" is substituted for "Act."

Sale by sample.

17. = Imp. § 15.

*Part II. Effects of the Contract.**Transfer of property as between seller and buyer.*

18—19. = Imp. §§ 16—17.

20. = Imp. § 18, except: in Rule 1 “is or are postponed” is substituted for “be postponed;” in Rule 2 “is done” is substituted for “be done;” in Rule 3 “is done” is substituted for “be done;” in Rule 5 “or custodier” is omitted.

Imp. § 18. In a sale of specified goods the title may pass without possession, but in a pledge no property passes until possession is taken, either actually or constructively. — *The Fat Kee Firm v. The Po On Marine Insurance Co.*, (1907), 2 H. K. L. R. 64.

21. = Imp. § 19, except: in (1) “or custodier” is omitted.

22. = Imp. § 20, except: “or custodier” is omitted, and “seller or buyer” is substituted for “buyer or seller.”

Transfer of title.

Sale by person not owner. 23. 1. Subject to the provisions of this Ordinance, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. 2. Provided, also, that nothing in this Ordinance shall affect: a) The provisions of any Acts or Ordinances relating to factors which may from time to time be in force in this Colony, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof; or b) The validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Imp. § 21. As to the nature of the title of the holder of a bill of lading, see cases cited in the note to Ord. No. 15 of 1886, § 2. See also Ord. No. 3 of 1896.

Market overt. 24. 1. Where goods are openly sold in a shop or market in this Colony, in the ordinary course of the business of such shop or market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller. 2. Nothing in this section shall affect the law relating to the sale of horses.

Imp. § 22.

25. = Imp. § 23.

Revesting of property in stolen goods on conviction of offender. 26. 1. Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in accordance with the provisions of section 24 or otherwise. 2. Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in such goods shall not revest in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender.

Imp. § 24.

27. = Imp. § 25, except: (3) reads as follows: “In this section the term ‘mercantile agent’ means a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.”

Imp. § 25. Cp. Ord. No. 3 of 1896.

28. = Imp. § 26 (1, 2), except: throughout “bailiff” is substituted for “sheriff.”

Part III. Performance of the Contract.

29—30. = Imp. §§ 27—28.

31. = Imp. § 29, except: in (1) “he has one” is substituted for “he have one,” and “contract is for” for “contract be for;” in (3) “delivery by the seller to the buyer” is substituted for “delivery by seller to buyer.”

32—33. = Imp. §§ 30—31.

34. = Imp. § 32, except: in (2) “omit to do so” is substituted for “omit so to do.”

35—37. = Imp. §§ 33—35.

38. = Imp. § 36, except: "right to do so" is substituted for "right so to do."

39. = Imp. § 37.

Part IV. Rights of unpaid Seller against the Goods.

40. = Imp. § 38, except: in (1) "Ordinance" is substituted for "Act;" in (2) "of this Act" is omitted.

41. = Imp. § 39, except: throughout "Ordinance" is substituted for "Act;" in (1) "enactment" is substituted for "statute."

Unpaid seller's lien.

42. = Imp. § 41, except: in (1) "Ordinance" is substituted for "Act;" in (2) "or custodier" is omitted.

43. = Imp. § 42.

44. = Imp. § 43, except: in (1) "or custodier" is omitted; in (2) "obtained a judgment" is substituted for "obtained judgment."

Stoppage in transitu.

45. = Imp. § 44, except: "Ordinance" is substituted for "Act."

46. = Imp. § 45, except: throughout "or custodier" is omitted.

47. = Imp. § 46, except: throughout "or custodier" is omitted.

Re-sale by buyer or seller.

48. = Imp. § 47, except: "Ordinance" is substituted for "Act."

49. = Imp. § 48.

Part V. Actions for Breach of the Contract.

Remedies of seller.

50. = Imp. § 49 (1, 2).

51. = Imp. § 50, except: in (3) "neglect or" is inserted before "refusal to accept."

Remedies of buyer.

52. = Imp. § 51, except: "if no time was fixed for delivery, then at the time of the neglect or refusal to deliver" is substituted for "if no time was fixed, then at the time of the refusal to deliver."

53. = Imp. § 52, except: throughout "or decree" is omitted, and the last sentence beginning with "the provisions of this section" is omitted.

54. = Imp. § 53 (1—4).

55. = Imp. § 54, except: "Ordinance" is substituted for "Act."

Part VI. Supplementary Provisions.

56. = Imp. § 55, except: "if the usage is such" is substituted for "if the usage be such."

57. = Imp. § 56, except: "Ordinance" is substituted for "Act."

Right, etc., enforceable by action. 58. Where any right, duty, or liability is declared by this Ordinance, it may, unless otherwise provided by this Ordinance, be enforced by action.

Imp. § 57.

59. = Imp. § 58.

Repeal of enactments. 60. The enactments mentioned in the Schedule to this Ordinance are hereby repealed (so far as they are applicable to the Colony), as from the commencement of this Ordinance, to the extent stated in the Schedule.

Imp. § 60.

61. = Imp. § 61 (1—4), except: throughout "Ordinance" is substituted for "Act;" in (1) "contained" is omitted.

Schedule.

This Schedule is to be read as referring to the Revised Edition of the Statutes prepared under the direction of the Statute Law Committee.

Table of enactments repealed.

| Session and chapter. | Title of Act and extent of repeal. |
|----------------------|---|
| 1 Jac. 1 c. 21. | An Act against brokers. The whole Act. |
| 29 Chas. 2 c. 3. | An Act for the prevention of frauds and perjuries. In part; that is to say, sections 15 and 16.*) |
| 9 Geo. 4 c. 14. | An Act for rendering a written memorandum necessary to the validity of certain promises and engagements. In part; that is to say section 7. |

*) Commonly cited as sections 16 and 17.

Factors.**No. 3 of 1896. An Ordinance to consolidate and amend the Law relating to Factors (1st July, 1896).¹⁾**

Short title. 1. This Ordinance may be cited as the *Factors Ordinance, 1896.*
Imp. § 17.

Interpretation of terms. 2. For the purposes of this Ordinance: "Mercantile agent" means a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods. A person shall be deemed to be in possession of goods or of the documents of title to goods, where the goods or documents are in his actual custody or are held by any other person subject to his control, or for him, or on his behalf; "Goods" include wares and merchandise; "Document of title" includes any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented; "Pledge" includes any contract pledging, or giving a lien or security on, goods, whether in consideration of an original advance, or of any further or continuing advance, or of any pecuniary liability; "Person" includes any body of persons corporate or unincorporate.

Imp. § 1. See Bills of Lading Ordinance, 1886 (Ord. No. 15 of 1886, § 2) and cases there cited.

Dispositions by mercantile agents.

3. = Imp. § 2, except: throughout "Ordinance" is substituted for "Act."

Imp. § 2. Brokers' notes or other documents having reference to the sale or purchase of any merchandise by any broker are subject to a stamp duty of 50 cents. — Ord. No. 16 of 1901, Sched. 1.

4—5. = Imp. §§ 3—4.

6. = Imp. § 5, except: "Ordinance" is substituted for "Act."

7. = Imp. § 6, except: "Ordinance" is substituted for "Act."

8. = Imp. § 7.

Dispositions by sellers and buyers of goods.

9—11. = Imp. §§ 8—10.

Supplemental provisions.

12. = Imp. § 11, except: "Ordinance" is substituted for "Act."

13. = Imp. § 12, except: throughout "Ordinance" is substituted for "Act."

14. = Imp. § 13, except: in both instances "Ordinance" is substituted for "Act."

Bills of Lading.**No. 15 of 1886. An Ordinance relating to Bills of Lading (14th December, 1886).¹⁾**

Short title. 1. This Ordinance may be cited as the *Bills of Lading Ordinance, 1886.*

This Ordinance originally constituted Ord. No. 29 of 1886. It repealed Ord. No. 2 of 1856. (An Ordinance to amend the law relating to bills of lading.)

¹⁾ The references (Imp.) are to the Imperial *Factors Act, 1889*, (52 & 53 Vic. c. 45). —

²⁾ The references in the notes (Imp.) are to the Imperial Act relating to bills of lading (18 & 19 Vic. c. 111).

Rights under bills of lading to vest in consignee or indorsee. 2. Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading, to whom the property in the goods therein mentioned passes upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Imp. § 1. A bill of lading must be distinguished from a godown warrant. A bill of lading is an absolute document of title, and represents the actual goods, whereas a godown warrant is merely a document of title as between the holder thereof and the godown company. The godown warrant merely entitles the holder or indorsee to possession. It is an acknowledgment by the godown company that goods have been deposited with it by a person whom it is agreed the company will treat as an owner, or as entitled to possession. — *Khoo Teck Seong v. Hung Yue Bank*, (1906), 2 H. K. L. R. 34; *The Fat Kee Firm v. The Po On Marine Insurance Co.*, (1907), 2 H. K. L. R. 64; *The Koe Guan Co. v. The Yan On Marine & Fire Insurance Co.*, (1907), 2 H. K. L. R. 95.

The Ordinance not to affect right of stoppage in transitu or claims for freight. 3. Nothing in this Ordinance shall prejudice or affect any right of stoppage in transitu, or any right to claim freight against the original shipper or owner, or any liability of the consignee or indorsee by reason or in consequence of his being such consignee or indorsee or of his receipt of the goods by reason or in consequence of such consignment or indorsement.

Imp. § 2.

Effect of bill of lading in hands of consignee, etc., as evidence of shipment as against master. 4. Every bill of lading in the hands of a consignee or indorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods, or some part thereof, may not have been so shipped, unless such holder of the bill of lading has had actual notice at the time of receiving the same that the goods had not been in fact laden on board: Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or of some person under whom the holder claims.

Imp. § 3. *Interpretation of clauses.* The clause that "the company is not to be responsible for the condition or contents of re-shipped or re-exported goods" does not apply where the goods are reshipped within the knowledge of both parties. Where the bill of lading provides that "weight, contents, and value, when shipped unknown," the burden of proof to show such weight, contents, and value is on the shipper. The clause that "in all cases and under all circumstances the liability of the company shall absolutely cease when the goods are free of the ship's tackle, and thereupon the goods shall be at the risk for all purposes, and in every respect of the shipper or consignee," refers to cases where delivery is accepted by the consignee, and does not apply where, although the cargo has been landed, the shipowner is in legal contemplation still a carrier and not a warehouseman. — *The Man Shun Wo v. British India Steam Navigation Co.*, (1907), 2 H. K. L. R. 42. As to the meaning of the term "mixed cargo" in the Saigon-Hongkong trade, see *The Man Cheong Yuen v. Fukusie & Co.*, (1908), 3 H. K. L. R. 86. — *Stamp duties.* Bills of lading or ships' receipts, where bills of lading are not used, are subject to a stamp duty of 10 cents for each part of every set. Bills of lading for goods shipped by any Government officer on account of Government are exempt. — Ord. No. 16 of 1901, Sched. I.

Importation of Sugar.

a) No. 14 of 1904. An Ordinance to give effect to Article VIII. of the Brussels Sugar Convention, 1902 (31st October, 1904).¹⁾

Short title. 1. This Ordinance may be cited as the *Sugar Convention Ordinance, 1904*. This Ordinance has been amended by Ord. No. 1 of 1905, *infra*.

¹⁾ Under § 3 of this Ordinance the Governor in Council has made the following

Regulations.

a) *Regulations of 30th June, 1905, for the import and export, etc., of sugar in transit.*

1. When sugar in transit arrives at this port, particulars of the said sugar, in Form A hereunder, shall be furnished forthwith to the Superintendent of Imports and Exports by the master of the vessel conveying the said sugar, or by the agent or importer. It shall then be competent for the Superintendent of Imports and Exports to issue a permit allowing the said sugar,

Prohibition of import of bounty-fed sugar. 2. [As amended by Ord. No. 1 of 1905, § 2.] When it has been reported by the Permanent Commission and notified in the *Gazette* that any direct or indirect bounty on the production or export of sugar is granted in any foreign country, no sugar in respect of which such bounty is granted

under police supervision, either to remain on board the said vessel for export, or to be transhipped therefrom to another vessel, or to be stored in a warehouse set apart for that purpose and approved by the Governor.

2. Before any sugar in transit which is stored in a warehouse can be removed therefrom for export, the agent or importer shall deliver to the Superintendent of Imports and Exports a written requisition containing particulars of the said sugar similar to the particulars aforesaid. It shall then be competent for the Superintendent of Imports and Exports to issue a permit allowing the said sugar, under police supervision, to be removed as aforesaid.

3. The Superintendent of Imports and Exports, his staff and the police shall have access to sugar in transit at all times and wherever situated.

4. Any person loading, unloading, or removing sugar in transit without a permit or not under police supervision as aforesaid, and any person neglecting to furnish to the Superintendent of Imports and Exports the particulars aforesaid of sugar in transit within twenty-four hours after its arrival at this port, and any person preventing or hindering the access of the Superintendent of Imports and Exports or his staff or the police to sugar in transit, shall be guilty of a breach of these Regulations.

Form A. Particulars of sugar in transit.

(Fill in whichever of these three lines is applicable, running the pen through those which are not required.)

| | |
|---|--------------|
| Arrived on board the S. S. | from |
| To remain on board the said S. S. | |
| To be transhipped to the S. S. | |
| To be stored in | |
| To be exported per | to |
| Consignee | |

| Marks and Nos. | Packages. | Description. | Weight. | Measurement. |
|----------------|-----------|--------------|---------|--------------|
| | | | | |
| | | | | |
| | | | | |

I hereby state that to the best of my knowledge the above particulars are correct, and that it is intended to deal with this sugar in accordance with the *Sugar Convention Ordinance, 1904*, and with the Regulations made thereunder.

Agent

b) *Regulations of 30th June, 1905, for the import and export, etc., of sugar, other than sugar in transit, (as amended by Regulations of 24th January, 1906).*

1. No sugar shall be imported into the Colony except at the Port of Victoria, and the master of every vessel having on board as cargo any sugar shall on arrival forthwith furnish to the harbour master a manifest of such sugar.

2. All sugar imported or brought into the Colony except in transit shall be accompanied by the following evidence of origin: A certificate indicating: a) The kind and quantity of the sugar; b) The kind, number, and marks of the packages; and c) The country of origin. With regard to sugar prepared in non-contracting states, the certificate must also indicate that sugar is derived from a factory which does not work sugar coming from a state to which a special duty or prohibition is applied.

3. The said certificate shall where possible be signed and issued by the fiscal authority having jurisdiction in the country of origin or of despatch, such fiscal authority being duly empowered for that purpose by his Government. Where there is no such fiscal authority, the said certificate may be signed and issued by a British consular officer in the country of origin or of despatch, or if in China, by the officer in charge of the Imperial Maritime Customs, at any port of origin or despatch where there is no British consular officer.

4. Inasmuch as it is possible that sugar may occasionally reach Hongkong before the arrival of the certificates of origin relating to the same, and it would be inconvenient and expensive to importers if such sugar were not delivered until the arrival of the said certificates, it shall be competent for the Superintendent of Imports and Exports to issue a permit for the delivery of such sugar on the security of a deposit of such amount, or of a bond in such penalty, as he may think fit for the due production of the said certificates within a prescribed period, provided that he sees no reason for suspecting that the sugar emanates from a prohibited country. And any master, agent, importer or other person who delivers such sugar without a permit as aforesaid shall be guilty of a breach of these Regulations, but on the application of the master or agent of a vessel arriving in the Colony having any sugar on board, the Superintendent of Exports and Imports may (without requiring any security) issue a permit for the temporary deposit of such sugar in the Kowloon godowns of the Hongkong and Kowloon Wharf and Godown Company, Limited, and the said company shall hold or dispose of such sugar as the Superintendent of Imports and Exports shall direct.

shall be imported into the Colony. Any person importing into the Colony sugar in respect of which such bounty is granted shall be guilty of a breach of this Ordinance. This section shall not apply to sugar in transit.

Power of Governor in Council to make regulations. 3. It shall be lawful for the Governor in Council, from time to time as he shall think fit, to make, revoke, and vary regulations for the purposes of this Ordinance, and in particular for the purpose of requiring that the origin of all sugar imported into the Colony shall be proved by such certificate or other evidence as the said regulations shall provide. The said regulations shall be published in *The Gazette*, and shall thereupon become as valid as if inserted in this Ordinance.

The Regulations are set forth in the notes.

Penalties. 4. Any person committing a breach of this Ordinance, or of any regulation made thereunder, shall, on summary conviction before a magistrate, be liable to a fine not exceeding five hundred dollars, and to the forfeiture of any article in respect of which such breach is committed.

b) No. 1 of 1905. An Ordinance to amend the Sugar Convention Ordinance, 1904 (22d June, 1905).

Short title and construction. 1. This Ordinance may be cited as the *Sugar Convention Amendment Ordinance, 1905*, and shall be read and construed as one with the *Sugar Convention Ordinance, 1904*.

[2. Amends Ord. No. 14 of 1904, § 2, and is there incorporated.]

Bills of Exchange.

a) No. 3 of 1885. An Ordinance to codify the Law relating to Bills of Exchange, Cheques, and Promissory Notes (4th May, 1885).¹⁾

Part I.

Short title. 1. This Ordinance may be cited as the *Bills of Exchange Ordinance, 1885*.

Imp. § 1. This Ordinance originally constituted Ord. No. 9 of 1885. In 1860 an Ordinance to amend the law relating to cheques or drafts on bankers, and to amend the law of false pretences (No. 4 of 1860) was enacted. This Ordinance was repealed by Ord. No. 11 of 1865. The Ordinance of 1885 is amended by Ord. No. 7 of 1907, *infra*.

2. = Imp. § 2, except: "Ordinance" is substituted for "Act," and the definition of "action" is as follows: "Action means action or suit and includes counter claim and set-off;" "for the time being" is omitted. "General holiday" has the same meaning as in the *Holidays Ordinance, 1912*," is added.

Part II. Bills of Exchange.

Form and interpretation.

3. = Imp. § 3.

Inland and foreign bills. 4. 1. An inland bill is a bill which is, or on the face of it purports to be: a) Both drawn and payable within this Colony; or b) Drawn within this Colony, upon some person resident therein. 2. Any other bill is a foreign

5. Whenever any sugar is exported from the Colony, the Superintendent of Imports and Exports shall on demand, if satisfied as to the country of origin of such sugar, issue to the exporter a certificate indicating: a) The kind and quantity of the sugar; b) The kind, number, and marks of the packages; c) The country of origin or of despatch, and the country for which the goods are destined; and d) The method of transport (railway, ship, boat, etc.).

6. There shall be paid to the Superintendent of Import and Export for every permit and for every certificate of origin granted under these Regulations a fee of \$ 5.

7. Where a breach of the Ordinance or of any of these Regulations is committed by a company or corporation, the secretary or manager thereof for the time being shall be liable for such contravention and to the consequences thereof.

8. The word "sugar" in these Regulations shall not include glucose, molasses, or sugar-sweetened products.

¹⁾ The references (Imp.) are to the Imperial *Bills of Exchange Act, 1882*, (45 & 46 Vic. c. 61). The changes made by the *Holidays Ordinance, 1912*, are here incorporated.

bill. 3. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

Imp. § 4.

5—7. = Imp. §§ 5—7.

8. = Imp. § 8, except: the beginning word is “where” instead of “when.”

9. = Imp. § 9, except: “Ordinance” is substituted for “Act.”

10. = Imp. § 10.

11. = Imp. § 11, except: “Ordinance” is substituted for “Act.”

12. = Imp. § 12.

13. = Imp. § 13, except: “is proved” is substituted for “be proved:” “or any other general holiday” is inserted after “Sunday.”

Computation of time of payment. 14. Where a bill is not payable on demand, the day on which it falls due is determined as follows: 1. Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that; when the last day of grace is a general holiday other than Sunday, Christmas Day, or Good Friday, or when the last day of grace and also the second day of grace are general holidays, the bill is due and payable on the succeeding business day; and provided also that when the last day of grace falls on a Sunday, Christmas Day, or Good Friday, which is not immediately preceded by another general holiday, the bill is due and payable on the preceding business day; 2. Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment; 3. Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance or for non-delivery; 4. The term “month” in a bill means calendar month.

Imp. § 14. See Ord. No. 5 of 1912, *infra*.

15—20. = Imp. §§ 15—20.

21. = Imp. § 21, except: in (1) “is the drawer’s” is substituted for “be the drawer’s.”

Capacity and authority of parties.

22. = Imp. § 22, except: in (1) “to do so” is substituted for “so to do.” “For the time being in force” is omitted.

23. = Imp. § 23.

Imp. § 23. *Semble*, a Chinese “chop” is a sufficient signature under this section. — 2 Norton-Kyshe, *History of the laws and courts of Hongkong*, p. 526, 527, citing Syed Tamby v. Chop Kim Chim Bee, (1898), 5 Straits Settlements L. R. 54. Signature is essential to liability. — Lau Man Cho v. Hongkong & Shanghai Banking Corporation, (1908), 4 H. K. L. R. 20.

24. = Imp. § 24, except: “Ordinance” is substituted for “Act.”

25—26. = Imp. §§ 25—26

Consideration for bill.

27. = Imp. § 27.

28. = Imp. § 28.

Imp. § 28. In a suit between the accommodation party and the person for whose accommodation the instrument was made, the real transaction may be set up, and the rights of the parties determined regardless of their ostensible positions as parties to the instrument. — Leung Sun Hoy v. The Cheong Wing Firm, (1908), 3 H. K. L. R. 69.

29. = Imp. § 29, except: in (2) “Ordinance” is substituted for “Act.”

Imp. § 29. A bank merely crediting the account of a customer with the amount of a negotiable instrument does not thereby become a holder in due course, even where the customer has overdrawn his account, unless the instrument is taken in respect of such overdraft. — National Bank of China v. Lemaire & Co., (1906), 1 H. K. L. R. 167.

30. = Imp. § 30.

Negotiation of bill.

31—33. = Imp. §§ 31—33.

34. = Imp. § 34, except: in (3) “Ordinance” is substituted for “Act.”

35. = Imp. § 35, except: in (1) “bill is indorsed” is substituted for “bill be indorsed.”

Imp. § 35. When a bill of exchange is payable to a person or to his order, and is indorsed with the name of an indorsee, and the addition of the words “value in account with the Oriental Bank,” such an indorsement does not preclude the restricted indorsee from making an assignment

of the bill so as to give the assignee a right of action for the benefit of the restraining indorser. — *Murrow v. Stuart*, (1853), 8 Moo. P. C. 267, affirming the decision of the Supreme Court of Hongkong set forth in part on p. 269—274.

36. = Imp. § 36.

37. = Imp. § 37, except: "Ordinance" is substituted for "Act."

38. = Imp. § 38.

General duties of the holder.

39. = Imp. § 39, except in (2) "place of business or residence" is substituted for "residence or place of business."

40. = Imp. § 40, except: in (1) "Ordinance" is substituted for "Act;" in (2) "if he does not" is substituted for "if he do not."

41. = Imp. § 41, except: in (1) (d) "or assignee" is added after "trustee."

42. = Imp. § 42, except: "if he does not" is substituted for "if he do not."

43. = Imp. § 43, except: in (1) (a) and in (2) "Ordinance" is substituted for "Act."

44. = Imp. § 44.

45. = Imp. § 45, except: in introductory paragraph and in (2) "Ordinance" is substituted for "Act;" in (2) "with respect to" is substituted for "with regard to."

46. = Imp. § 46, except: in (2) (a) "Ordinance" is substituted for "Act."

47. = Imp. § 47, except: in (2) "Ordinance" is substituted for "Act."

48. = Imp. § 48, except in introductory paragraph "Ordinance" is substituted for "Act;" in (2) "the bill has" is substituted for "the bill shall have."

49. = Imp. § 49, except: in (2) "the notice" is substituted for "notice of dishonour," and "is his principal" for "be his principal;" in (4) "where the notice" is substituted for "where notice;" in (8) "where notice is required" is substituted for "where notice of dishonour is required;" in (10) "the" is inserted before "notice" and "or assignee" is inserted after "trustee;" in (11) "the" is inserted before "notice;" in (12) "there is" is substituted for "there be" in both instances; in (13) "gives notice" is substituted for "give notice;" in (14) "of dishonour" is omitted; in (15) "where the notice" is substituted for "where a notice."

50. = Imp. § 50, except: in (2) (a) "Ordinance" is substituted for "Act," and the beginning word is "where" instead of "when."

51. = Imp. § 51, except: in (1) "thinks fit" is substituted for "think fit;" in (2) "if it is not so protested" is substituted for "if it be not so protested;" in (4) "Ordinance" and of the *Holidays Ordinance, 1912*, is substituted for "Act."

52. = Imp. § 52.

Liabilities of parties.

53. = Imp. § 53 (1) except: "Ordinance" is substituted for "Act," and "this subsection shall not extend to Scotland" is omitted.

54. = Imp. § 54.

55. = Imp. § 55, except: in (1) (a) and in (2) (a) "if it is dishonoured" is substituted for "if it be dishonoured," and "are duly taken" for "be duly taken."

56. = Imp. § 56.

57. = Imp. § 57, except: in (3) "Ordinance" is substituted for "Act."

58. = Imp. § 58.

Discharge of bill.

59—64. = Imp. §§ 59—64.

Acceptance and payment for honour.

65. = Imp. § 65, except: in (1) "of exchange" is omitted after "bill."

66. = Imp. § 66.

67. = Imp. § 67, except: in (4) "of exchange" is omitted after "bill."

68. = Imp. § 68, except: in (6) "if the holder does not" is substituted for "if the holder do not."

Lost instrument.

69. = Imp. § 69, except: "all persons whomsoever" is substituted for "all persons whatsoever."

70. = Imp. § 70.

Bill in a set.

71. = Imp. § 71.

Conflict of laws.

72. = Imp. § 72, except: throughout "this Colony" is substituted for "the United Kingdom;" in (2) "Ordinance" is substituted for "Act;" in (4) "and" is inserted at the end of the subsection.

Part III. Cheques on a Banker.

73. = Imp. § 73, except: "Ordinance" is substituted for "Act."

74. = Imp. § 74, except: "Ordinance" is substituted for "Act."

75. = Imp. § 75.

Crossed cheques.

76—77. = Imp. §§ 76—77.

78. = Imp. § 78, except: in both instances "Ordinance" is substituted for "Act."

79. = Imp. § 79, except: in (2) in both instances "Ordinance" is substituted for "Act."

80—81. = Imp. §§ 80—81.

Protection to collecting banker. Customer's account may be credited before payment of cheque received. 82. [As amended by Ord. No. 7 of 1907, § 2.] 1. Where a banker, in good faith and without negligence, receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment. 2. A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment.

Imp. § 82.

Part IV. Promissory Notes.

83. = Imp. § 83, except: in (4) "this Colony" is substituted for "the British Islands."

84—85. = Imp. §§ 84—85.

86. = Imp. § 86, except: in (1) "if it is not so presented" is substituted for "if it be not so presented."

87—88. = Imp. §§ 87—88.

89. = Imp. § 89, except: in (1) "Ordinance" is substituted for "Act."

Part V. Supplementary Provisions.

90. = Imp. § 90, except "Ordinance" is substituted for "Act".

91. = Imp. § 91, except: throughout "Ordinance" is substituted for "Act."

Computation of time. 92. 1. Where by this Ordinance the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. 2. "Non-business days," for the purposes of this Ordinance, mean general holidays.

Imp. § 92.

93. = Imp. § 93, except: "Ordinance" is substituted for "Act."

94. = Imp. § 94, except: (2) reads as follows: "The form in the Schedule to this Ordinance may be used, with necessary modifications, and, if used, shall be sufficient."

Crossing dividend warrant. 95. The provisions of this Ordinance relating to crossed cheques shall apply to a warrant for payment of dividend.

Imp. § 95.

Savings. 96. 1. The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques shall continue to apply thereto, notwithstanding anything in this Ordinance. 2. The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Ordinance, shall continue to apply to bills of exchange, promissory notes, and cheques. 3. Nothing in this Ordinance shall affect: a) The provisions of any Stamp Ordinance for the time being in force or any law or enactment for the time being in force relating to the revenue; or b) The provisions of the *Companies Ordinance, 1865*, or any Ordinances amending it, or any Ordinance relating to joint stock banks or companies; or c) The validity of any usage relating to dividend warrants or the indorsements thereof.

Imp. § 97. A cheque payable on demand to any person, to bearer, or order, is subject to a stamp duty of 2 c. Bills of exchange drawn out of but payable on demand within the Colony, not being cheques, and bearing the date on which they were made, are subject to the same stamp duty. Bills of exchange of any other kind whatsoever, except a cheque or bank note, and promissory notes of any kind whatsoever, except bank notes, are subject to the following stamp duties: Under \$ 10, free; from \$ 10 to \$ 50, 2 c; From \$ 50 to \$ 250, 5 c; From \$ 250 to \$ 500, 10 c; From \$ 500 to \$ 1000, 20 c; From \$ 1000 to \$ 2000, 50 c; From \$ 2000 to \$ 3000, \$ 1; From \$ 3000 to \$ 5000, \$ 1.50; From \$ 5000 to \$ 10 000, \$ 2; From \$ 10 000 to \$ 15,000, \$ 3; From every \$ 5000 additional, or part thereof, 50 c. Where bills of exchange are drawn in sets of two or more, of the above duties are to be charged on the first part of the set, and an impressed stamp of the same nominal value on the other parts. But only the amount of the stamp on the first part is payable. In the case of a bill of exchange drawn out of and payable on demand out of the Colony, the duty payable on such bill of exchange, when it is negotiated within the Colony, is 2 c. In the case of bills of exchange in sets drawn out of the Colony, the whole duty is payable on that part of the set which is first presented for payment or acceptance, or is first otherwise negotiated, the other parts of the set being free. The transfer by mere indorsement of a duly stamped bill of exchange, promissory note, or other negotiable instrument is exempt from stamp duty. — Ord. No. 16 of 1901, Sched. I, as amended by Rules of 19th June, 1906.

Schedule.

Form of protest which may be used when the services of a notary can not be obtained.

Know all men that I, A. B., of _____ at the request of C. D., there being no notary public available, did on the _____ day of _____ 1 _____, at demand payment (or acceptance) of the bill of exchange hereunder written from E. F., to which demand he made answer (*state answer, if any*); wherefore I now, in the presence of G. H. and J. K., do protest the said bill of exchange.

Dated the _____ day of _____, 1 _____.
(Signed)

A. B. }
G. H. } Witnesses.
J. K. }

N. B. The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

b) No. 7 of 1907. An Ordinance to amend the Law relating to Bills of Exchange (14th June, 1907).

Short title and construction. 1. This Ordinance may be cited as the *Bills of Exchange (Amendment) Ordinance, 1907*, and this Ordinance and the *Bills of Exchange Ordinance, 1885*, may be cited together as the *Bills of Exchange Ordinances, 1885 and 1907*.

[2. Amends Ord. No. 3 of 1885, § 82, and is there incorporated.]

Drafts on bankers payable to order on demand sufficient authority for payment without proof of indorsement. 3. Any draft or order drawn upon a banker for a sum of money payable to order on demand which shall, when presented for payment, purport to be indorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such indorsement or any subsequent indorsement was made by or under the direction or authority of the person to whom the said draft or order was or is made payable either by the drawer or any indorser thereof.

Public and Bank Holidays.

No. 5 of 1912. An Ordinance to make Provision for the due Observance of General, Public, and Bank Holidays and to amend and consolidate the Law relating to the same (8th March, 1912).

Short title. 1. This Ordinance may be cited as the *Holidays Ordinance, 1912*.

Definitions. 2. In this Ordinance: "Public holiday" means a day which (subject to the provisions of section 5) shall be kept as a holiday by all educational establish-

ments, public offices, and Government departments. "General holiday" means a day which (subject to the provisions of section 5) shall be a *dies non* and which shall be kept as a holiday by all banks, educational establishments, public offices and Government departments.

General holidays. 3. The following days shall be general holidays: 1. Every Sunday; 2. The first week-day of January; 3. Chinese New Year's Day, or if that day should be a Sunday then the following day. Provided that if the Chinese hereafter adopt the Gregorian Calendar then the second week-day in January; 4. Good Friday; 5. The day following Good Friday; 6. Easter Monday; 7. Whit Monday; 8. The first Monday in August; 9. The second Monday in October; 10. The Monday which falls on or nearest to the ninth day of November; 11. Christmas Day or if that day should be a Sunday then the following day; 12. The twenty-sixth day of December, or if that day should be a Sunday then the following day, unless Christmas Day fall on a Sunday then the Tuesday following Christmas Day; 13. The Birthday of His Majesty the King unless it shall be ordered by the Governor, by an Order published in the *Gazette*, that His Majesty's Birthday is to be kept on some other day, and then, such other day.

Public holidays. 4. The following day shall be a public holiday: Empire Day, that is to say, the 24th day of May or if that day should be a Sunday then the following day.

Power to make regulations restricting the observance in general and public holidays by public offices and Government departments. 5. The Governor may make regulations excluding in whole or in part from the operation of sections 3 and 4 any public office or Government department.

Acts relating to negotiable instruments not compellable to be done on a general holiday. 6. Subject to the provisions of section 14 of the *Bills of Exchange Ordinance, 1885*, as amended by this Ordinance it shall not be necessary for any person to make any payment or to do any other act, including noting or protesting, relating to any negotiable instrument on a general holiday, but all obligation to make such payment or to do any such other act shall apply to the next following day not being itself a general holiday.

Power of the Governor to appoint holidays. 7. It shall be lawful for the Governor-in-Council by notification in the *Gazette* to appoint any day to be observed as a general or as a public holiday in addition to or in substitution for any day mentioned in section 3 or in section 4 and thereupon the provisions of this Ordinance shall apply to such added or substituted day and shall cease to apply to any day for which another has been so substituted.

Repeals and amendments. 8. 1. The *Public Holidays Ordinance, 1875*, (as amended by the *Executive Council Relief of Duties Ordinance 1910*), and the *Victoria Day Ordinance, 1903*, are hereby repealed. 2. The *Bills of Exchange Ordinance, 1885*, is hereby amended as follows: a) in section 2 thereof by the insertion after the definition of "Delivery" of the words "'General Holiday' has the same meaning as in the *Holidays Ordinance, 1912*;" b) In subsection 2 of section 13 thereof by the addition after the word "Sunday" of the words "or any other general holiday"; c) By the deletion of the provisos a and b to section 14 thereof and by the substitution therefor of the words: "Provided that when the last day of grace is a general holiday other than Sunday, Christmas Day or Good Friday, or when the last day of grace and also the second day of grace are general holidays the bill is due and payable on the succeeding business day and provided also that when the last day of grace falls on a Sunday, Christmas Day or Good Friday which is not immediately preceded by another general holiday the bill is due and payable on the preceding business day;" d) In subsection 4 of section 51 by the insertion after the word "Ordinance" of the words "and of the *Holidays Ordinance, 1912*;" e) In subsection 2 of section 92 thereof by the deletion of the words "Sundays and public holidays and bank holidays within the meaning of these terms as used in the *Holidays Ordinance, 1875*," and by the substitution therefor of the words "general holidays." 3. The *Supreme Court (Vacations) Ordinance, 1898*, is hereby amended as follows: a) By the repeal of section 2 thereof and by the substitution therefor of the following section: "2. In this Ordinance: 'public holiday' and 'general holiday' have the meanings respectively assigned to such expressions by the *Holidays Ordinance, 1912*;" b) In section 4 (1) by the insertion at the end thereof of the following proviso: "Provided that, if the Chinese hereafter adopt the Gregorian Calendar, the Chinese New Year vacation shall be

abolished and the Christmas vacation extended and terminate on the third week-day in January;" c) In section 5 and also in section 10 thereof by the insertion in each case of the words "general holidays and" after the words "except on."

Bankruptcy.

a) No. 7 of 1891. An Ordinance to amend the Law relating to Bankruptcy (1st January, 1892).¹⁾

Short title. 1. This Ordinance may be cited as the *Bankruptcy Ordinance, 1891*.

Imp. § 1. This Ordinance originally constituted Ord. No. 20 of 1891. The first Bankruptcy Ordinance was No. 3 of 1846 (an Ordinance for the relief of insolvent debtors within the Colony of Hongkong). This was amended by No. 5 of 1846 (an Ordinance for the substitution of notices and advertisements under Ordinance No. 3 of 1846), and by No. 2 of 1849 (an Ordinance to amend Ordinance No. 3 of 1846). A draft bill for the relief of insolvent debtors prepared by the Attorney-General was introduced in the legislative council in 1862, but the bill was not adopted owing to the disapproval of the Secretary of State. Another bill was introduced in 1863. In 1864 a Bankruptcy Ordinance (No. 5 of 1864) based on the English *Bankruptcy Act, 1861*, (24 & 25 Vic. c. 134) was adopted. (As to the interpretation of some of its provisions, see *Benecke v. Whittall*, (1872), L. R. 2 A. C. 602.) This Ordinance repealed the Ordinance of 1846, together with its amendments, and was itself amended by Ord. No. 15 of 1867 (The Bankruptcy Amendment Ordinance, 1867) and by No. 9 of 1882 (The Bankruptcy Official Assignee Ordinance, 1882). It was repealed, together with its amendments, by the present Ordinance. The Ordinance of 1891 was amended by Ords. No. 6 of 1892, No. 24 of 1895, No. 2 of 1901, No. 29 of 1901 and No. 6 of 1902. The text of the Ordinance of 1891, as herein reprinted, incorporates all of the amending Ordinances except No. 6 of 1902.

Interpretation of terms. 2. In this Ordinance, unless the context otherwise requires: "Available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made; "Gazetted" means published in *The Gazette*; "Goods" include all chattels personal; "Ordinary resolution" means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution; "Property" includes money, goods, things in action, land, and every description of property, real or personal, immoveable and moveable, corporeal or incorporeal, and whether situate in this Colony or elsewhere, and any interest therein, whether at law or in equity, present or future, vested or contingent, arising out of or incident to property as above defined; "Provable debt" includes any debt or liability provable in bankruptcy under this Ordinance; "The Registrar" means the Registrar of the Supreme Court; "Secured creditor" means a person holding a mortgage, charge, or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor; "Special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution; "Suit" and "action" are synonymous terms; "The trustee" means the trustee in bankruptcy of the debtor's estate.

Imp. § 168.

Part I. Proceedings from Act of Bankruptcy to Discharge.

Acts of bankruptcy.

Enumeration of acts of bankruptcy. 3. 1. A debtor commits an act of bankruptcy in each of the following cases: a) If, in this Colony or elsewhere, he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally; or b) If, in this Colony or elsewhere, he makes a fraudulent conveyance, gift, delivery, or transfer of his property or of any part thereof; or c) If, in this Colony or elsewhere, he makes a conveyance or transfer of his property or any part thereof or creates any charge thereon which would be void as a fraudulent preference if he were adjudged bankrupt; or d) If, with intent to defeat or delay his creditors, he does any of the following things, namely, departs out of

¹⁾ The references in the notes (Imp.) are to the Imperial *Bankruptcy Act, 1883*, (46 & 47 Vic. c. 42), unless otherwise indicated.

this Colony, or, being out of this Colony, remains out of it, or departs from his dwelling house, or otherwise absents himself, or begins to keep house, or removes his property or any part thereof beyond the jurisdiction of the Court; or e) If execution against him in any proceedings in the Court has been levied by seizure of his goods, and the goods have been sold or held by the bailiff of the Court for twenty-one days; or f) If he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself; or g) If a creditor has obtained a final judgment against him for any amount and, execution thereon not having been stayed, has served on him in this Colony, or by leave of the Court elsewhere, a bankruptcy notice under this Ordinance requiring him to pay the judgment debt in accordance with the terms of the judgment or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within eight days after service of the notice, in case service is effected in the Colony, or, in case service is effected elsewhere, within the time limited in that behalf by the order giving leave to effect service elsewhere, either comply with the requirements of the notice or satisfy the Court that he has a counter claim, set-off, or cross-demand which equals or exceeds the amount of the judgment debt and which he could not set up in the action in which the judgment was obtained; or h) If he gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts. 2. A bankruptcy notice under this Ordinance shall be issued to a judgment creditor by the Registrar on the filing of a request for that purpose.

Imp. § 4; 53 & 54 Vic. c. 71, § 1. See Ord. No. 6 of 1902, § 3. The extra-territorial provisions of this Ordinance are valid. — *In re Chan Yue Shan, Ex parte Chan King Po*, (1908), 4 H. K. L. R. 128.

Receiving order and official receiver.

Jurisdiction to make receiving order. 4. Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, called a "receiving order," for the protection of the estate.

Imp. § 5.

Conditions on which creditor may petition. 5. 1. Subject to the provisions of the next succeeding section, a creditor shall not be entitled to present a bankruptcy petition against a debtor unless: a) The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to three hundred dollars; and b) The debt is a liquidated sum payable either immediately or at some certain future time; and c) The act of bankruptcy on which the petition is grounded has occurred within four months before the presentation of the petition; and d) The debtor is domiciled in the Colony, or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling house or place of business in the Colony. 2. If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt or give an estimate of the value of his security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated, in the same manner as if he were an unsecured creditor.

Imp. § 6. See Ord. No. 6 of 1902, § 3. Cp. *In re Chan Yue Shan, Ex parte Chan King Po*, (1908), 4 H. K. L. R. 128. A receiving order rescinded on the ground that the debtor was not domiciled in Hongkong. — *In re Wei Long Shan, Ex parte Yuen Hing*, (1908), 4 H. K. L. R. 144.

Liability of firm carrying on business in the Colony to have receiving order or adjudication made against. 6. The following provisions shall have effect in the case of a firm carrying on business in the Colony, that is to say: 1. A creditor of the firm shall be entitled to present a bankruptcy petition against the firm, and a receiving order and an order of adjudication may be made against the firm in respect of an act of bankruptcy committed in reference to the business of the firm by any partner of the firm or by any person having the control or management of the business of the firm. An act of bankruptcy shall be deemed to be committed in reference to the business of the firm in all cases in which the act relates to the property or creditors of the firm and would be an act of bankruptcy by such partner or person as aforesaid if it related to his property or creditors. 2. It shall be sufficient that a receiving order against the firm be made in the firm name, without mentioning

the names of the partners, and such receiving order shall affect the joint and separate property of all the partners, and the like provisions shall apply in respect of an adjudication of bankruptcy. 3. The right of a creditor to present a bankruptcy petition against the firm, and the jurisdiction of the Court to make a receiving order or an adjudication of bankruptcy against the firm, shall not be affected by the fact, if it is so, that all or any of the partners of the firm are not British subjects or are not resident or domiciled in the Colony; and 4. The provisions of this section shall, so far as the nature of the case will permit, apply to any person carrying on business in the Colony in a name or style other than his own name.

Imp. §§ 110, 115. Where a firm is carrying on trade in London and Hongkong, and the partner resident in England expressly authorizes the partners resident in Hongkong to file a petition in bankruptcy in the Hongkong court, that court has power to make an adjudication of bankruptcy against the firm, even though the English court has, previous to such adjudication in Hongkong, declared the English partner a bankrupt. *Seemle*, the Hongkong court has power to make a joint adjudication against a firm carrying on business in Hongkong, even when there has been a separate adjudication in England against the English resident partner, and the latter has given no express authorization to file a petition in bankruptcy in Hongkong. — *Lyall v. Jardine*, (1870), L. R. 3 A. C. 318. In connection with the bankruptcy of the same firm Sir Edmund Hornby, Chief Judge of China and Japan at Shanghai, held that the resident partner had implied authority to file such a petition for the firm. — 2 Norton-Kyshe, *History of the laws and courts of Hongkong*, 132. Commenting on *Lyall v. Jardine*, Chief Justice Piggott says: "The meaning of this opinion can not, I think, be in doubt; it applies the law laid down in *Ex parte Rogers*, [(1881). L. R. 16, C. D. 665] to bankruptcy proceedings in the Colony, started subsequently to proceedings in England. The property of the debtor in the Colony is already vested in the English assignee, there are therefore no assets with which the colonial assignee could be vested But the point in *Lyall v. Jardine* was that the proceedings in the Colony being against the firm, they covered a wider area than those in England against the partner. So far as the area was coincident, the paramount rights of the English trustee would give him some rights in regard to the property of the partner with which he was vested. It would not otherwise give him any rights of control over the bankruptcy of the firm." — *Foreign Judgments*, Pt. III, pp. 92, 93. Though an act of bankruptcy may be committed by an agent, such an act can be an act of bankruptcy as regards the principal only if committed under authority of the debtor. — *In re Wong Chung Kee, Ex parte Wing Fung Lung*, (1906), 1 H. K. L. R. 207. The bankruptcy of a firm is a bankruptcy of the partners composing the firm. — *In re Wong Chung Kee, Ex parte Wing Fung Lung*, (1906), 1 H. K. L. R. 207. And see notes to § 5, *supra*.

Creditor's petition. 7. 1. A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and served in the same manner as a writ of summons. 2. It shall not be heard until the expiration of eight days from the service thereof, except by leave of the Court on good cause shown. 3. At the hearing the Court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or if more acts of bankruptcy than one are alleged in the petition, of some one of the alleged acts of bankruptcy, and, if, satisfied with the proof, may make a receiving order in pursuance of the petition. 4. If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the service of the petition, or of the act of bankruptcy, or is satisfied by the debtor that he is able to pay his debts, or is satisfied that there are and will be no substantial assets for division among the creditors, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition. 5. A debtor intending to show cause against a petition shall file with the Registrar a notice specifying the statements in the petition he intends to dispute, and shall serve on the petitioning creditor or his solicitor a copy of such notice two days before the day on which the petition is to be heard. 6. Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security, if any, being given as the Court may require for payment to the petitioner of any debt which may be established against him in due course of law and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt. 7. Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid. 8. A creditor's petition shall not after presentment be withdrawn without the leave of the Court.

Imp. § 7. The service on a partnership of a petition in bankruptcy may be effected by service on a person in control of the partnership business, provided he be a person whose acts would be binding on the firm as acts of bankruptcy within § 6 (1). Under the facts in this case it was held that service on the assistant accountant was not a proper service. — *The Wai Tai Cheung Firm, Ex parte Chan Poo Shew*, (1906), 1 H. K. L. R. 213.

Debtor's petition. 8. 1. A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy with the previous filing by the debtor of any declaration of inability to pay his debts, and the Court shall thereupon make a receiving order: Provided that it shall be lawful for the Court, in its discretion, to refuse the order unless it is satisfied that there are or will be substantial assets for division among the creditors. 2. A debtor's petition shall not after presentment be withdrawn without the leave of the Court.

Imp. § 8.

Appointment of Official Receiver. 9. 1. The Governor may appoint such person as he thinks fit to be Official Receiver of debtors' estates under this Ordinance, and may remove such person from such office. 2. The Official Receiver shall act under the general authority and direction of the Governor and shall also be an officer of the Court.

Imp. § 86 (1).

Effect of receiving order. 10. 1. On the making of a receiving order, the Official Receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Ordinance, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect or¹⁾ the debt or shall commence or continue any action or other legal proceedings, except with the leave of the Court and on such terms as the Court may impose. On making the receiving order, the Court may, if it thinks fit, direct that no execution against the person of the debtor shall be stayed until the debtor finds sufficient security to appear and abide by all orders of the Court in relation to the bankruptcy proceedings or until further order, and in such case any creditor may, in the meantime, proceed to execution against the person of the debtor in the same way as if no receiving order had been made. 2. Nothing in subsection (1) shall affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed. 3. If, at the date of the receiving order, the debtor is a prisoner under an execution for a civil debt, he shall not be entitled to his release except by order of the Court, but the Court may, in its discretion, order his release either unconditionally or subject to such conditions as it may deem fit to secure the debtor's presence at the subsequent proceedings or otherwise.

Imp. § 9.

Making of order for immediate possession of bankrupt's property after petition.

11. 1. The Court, if it is shown to be necessary for the protection of the estate, may, at any time after the presentation of a bankruptcy petition and before a receiving order is made, appoint the Official Receiver to be interim receiver of the property of the debtor or of any part thereof, and direct him to take immediate possession thereof or of any part thereof, including all books of account and other papers and documents belonging to the debtor and relating to his business. 2. At any time after the presentation of a bankruptcy petition, the Court may, in its discretion, stay any action, execution, or other legal process against the property or person of the debtor or allow it to continue on such terms as it may think just.

Imp. § 10.

Appointment of manager or interim receiver. 12. 1. In any case where it is desirable that the debtor's business be temporarily carried on, and it is inconvenient for the Official Receiver to carry it on, the Court may appoint a special manager for the purpose to act, under the direction of the Official Receiver until the appointment of the trustee. 2. The Court may also, if necessary, appoint an interim receiver for the protection of the estate to act under the direction of the Official Receiver. 3. The special manager or interim receiver shall receive such remuneration and give such security as the Court may order.

Imp. § 12.

¹⁾ *Sic*; obviously "of."

Advertisement of receiving order. 13. Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, and the date of the petition, shall be gazetted and advertised in at least one local newspaper by the Official Receiver.

Imp. § 13.

Duties of Official Receiver. 14. 1. As regards the estate of the debtor it shall be the duty of the Official Receiver: a) To act as interim receiver of the debtor's estate pending the appointment of a trustee, and, where a special manager has not been appointed, to act as manager thereof; b) To raise money for the purposes of the estate in any case where, in the interests of creditors, it appears necessary to do so; c) To take possession of all the books, documents, and papers of the debtor and of all or any part of the property of the debtor; d) To summon and preside at the first meeting of creditors; e) To issue forms of proxy for use at the meetings of creditors; f) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs; g) To advertise the receiving order and the date of the creditors' first meeting and of the debtor's public examination and such other matters as it may be necessary to advertise; h) To act as trustee during any vacancy in the office of trustee; and i) To assist the debtor in preparing his statement of affairs, in case the debtor has no solicitor acting for him, and is unable properly to prepare it himself. 2. As regards the debtor it shall be the duty of the Official Receiver: a) To investigate the conduct of the debtor and to report to the Court stating whether there is reason to believe that the debtor has committed any act which constitutes an offence under this Ordinance or which would justify the Court in refusing, suspending, or qualifying an order for his discharge; b) To conduct the public examination of the debtor; and c) To assist in the prosecution of any fraudulent debtor. 3. The Official Receiver shall, on the appointment of a trustee other than himself, account to the Court for all his dealings with the estate, and, on passing such accounts, shall be entitled to be paid out of the estate such fee as the Court may order.

Imp. §§ 69, 70.

Proceedings consequent on receiving order.

First and other meetings of creditors. 15. 1. As soon as may be after the making of a receiving order against a debtor, the first general meeting of his creditors shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement can be entertained or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with his property. 2. Unless the Court otherwise orders, such meeting shall be held within twenty-eight days of the date of the receiving order, and not less than three days' notice of the time and place thereof shall be given in *The Gazette* and a local newspaper. 3. The meeting shall be presided over by the Official Receiver, and the proceedings thereat shall be recorded by him in writing. 4. A person shall not be entitled to vote at the first or any subsequent meeting unless he has proved his debt. 5. A creditor who has proved may vote either in person or by proxy appointed under his hand or by attorney duly authorized in that behalf. A person claiming to vote for or on behalf of a creditor shall satisfy the Official Receiver of his right to do so or be precluded from voting. 6. The meeting may be adjourned from time to time and from place to place. 7. Previous to the first meeting it shall be the duty of the Official Receiver to give notice in writing, as he may think fit, to such persons as are mentioned as creditors in the debtor's statement of affairs or as he knows to be or has reason to believe are creditors of the estate. The notice shall state: a) The time and place of meeting; b) That the creditor can not vote unless he previously proves his debt; c) That forms of proof and proxy can be obtained at the office of the Official Receiver during office hours; and d) That at such meeting the creditors will be asked to consider whether the debtor shall be adjudged bankrupt or whether they will entertain a proposal for a composition or scheme of arrangement. 8. Any subsequent meeting shall be summoned by giving notice in writing to such of the creditors as have proved, and such notice shall state the object for which such meeting is summoned.

Imp. § 15, and Sched. I.

Debtor's statement of affairs. 16. 1. Where a receiving order is made, the debtor shall make out and submit to the Official Receiver a statement of and in relation to his affairs, verified by affidavit, and showing particulars of his assets,

debts, and liabilities, the names, residences, and occupations of his creditors, whether in the Colony or elsewhere, the securities held by them respectively, the dates when the securities were respectively given, and the debtor's personal expenses and, if any, business expenses for the last preceding three years. 2. The statement shall be made and deposited with the Official Receiver within seven days of the making of the receiving order, unless the time is extended by the Court. 3. If the debtor fails, without reasonable excuse, to comply with the requirements of this section, he may be punished for a contempt of Court, and the Court may, on the application of the Official Receiver or of any creditor, adjudge him bankrupt forthwith.

Imp. § 16, and Sched. I.

Public examination of debtor.

Proceedings at public examination of debtor. 17. 1. As soon as may be after the time limited for filing the statement of affairs, the Court shall hold a public sitting, on a day to be appointed, for the examination of the debtor, and the debtor shall attend thereat and shall be examined as to his conduct, dealings, and property. 2. The Official Receiver and any creditor may take part in the examination of the debtor, and the Court may put such questions as it may deem expedient. 3. The Official Receiver may, if specially authorized by the Court, employ a solicitor, with or without counsel, to conduct such examination, but no solicitor or counsel shall be allowed to take part in the examination on behalf of the debtor. 4. The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him, and it shall not be lawful for the debtor to refuse to answer any question on the ground that the answer might tend to criminate him under the provisions of this Ordinance. 5. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him. 6. The examination may be adjourned from time to time, and shall not be concluded until after the day appointed for the first meeting of creditors. 7. The examination may be held by a Commissioner of the Court, if the Court so orders, and in such case the Commissioner appointed shall have all the powers of the Court with respect to the examination.

Imp. § 17.

Composition or scheme of arrangement.

Composition or scheme of arrangement. 18. 1. The creditors may, at the first meeting or any adjournment thereof, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the debtor or a proposal for a scheme of arrangement of the debtor's affairs. 2. The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed (by a majority in numbers representing three-fourths in value of all the creditors who have proved) at a subsequent meeting of the creditors and is approved by the Court. 3. The subsequent meeting shall be summoned by the Official Receiver by not less than seven days' notice, and shall not be held until after the public examination of the debtor is concluded. The notice shall state generally the terms of the proposal and shall be given by posting a letter or by a notice in writing to each creditor who has proved and by advertising the subsequent meeting in *The Gazette* and at least in one local newspaper. 4. The debtor or the Official Receiver may, after the composition or scheme is accepted by the creditors, apply to the Court to approve it. 5. If the Court is of opinion that the terms of the composition or scheme are not reasonable or are not calculated to benefit the general body of creditors, or if the Court is dissatisfied with the conduct of the debtor, the Court may, in its discretion, refuse to approve the composition or scheme. 6. If the Court approves the composition or scheme, the approval thereof may be testified by the seal of the Court being attached to the instrument containing the terms of the composition or scheme or by the terms being embodied in an order of the Court. A composition or scheme accepted and approved as aforesaid shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy: Provided that if any such debt was incurred by fraud or if forbearance of the payment thereof before the date of the arrangement was obtained by fraud, the debtor shall remain liable for the unpaid balance, unless the defrauded creditor was an assenting party to the arrangement. As regards any debt not provable in

bankruptcy, it shall be binding on the creditor if he assents to the composition or scheme, but not otherwise. 7. The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court. 8. If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme can not, in consequence of legal difficulties or for any other sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any creditor, adjudge the debtor bankrupt and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, any debt provable in other respects which has been contracted before the date of the adjudication shall be provable in the bankruptcy. 9. If, under or in pursuance of a composition or scheme, a trustee is appointed by the creditors to administer the debtor's property or manage his business, Part III shall apply to the trustee and to the composition or scheme as if the trustee were a trustee in a bankruptcy, and as if the terms "bankruptcy," "bankrupt," and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and an order approving the composition or scheme. 10. Part II shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee," "bankruptcy," and "order of adjudication" as in the last preceding subsection. 11. No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

Imp. 53 & 54 Vic. c. 71, § 3. In subsection (5) the conduct of the debtor referred to is such conduct as would justify the Court in ordering a prosecution against the debtor or in refusing or suspending or attaching conditions to his discharge under § 27. — *In re Fan Wa Shan*, (1908), 3 H. K. L. R. (Bankr.) 6.

Cases in which adjudication of bankruptcy to be made. 19. 1. Where a receiving order is made against a debtor, then, if the creditors, at the first meeting or any adjournment thereof, by resolution resolve that the debtor be adjudged bankrupt or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved within fourteen days after the conclusion of the examination of the debtor or such further time as the Court may allow, the Court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee. 2. Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, the date of the adjudication, and the name of the trustee, shall be gazetted and advertised in at least one local paper. 3. The date of the order shall, for the purposes of this Ordinance be the date of the adjudication.

Imp. § 20. The provision in subsection (1) in reference to the acceptance or approval of a composition or scheme presupposes that an application for adjudication was made prior to the acceptance of the scheme; in that event the scheme must be accepted or approved within the time limited. If the scheme is in fact accepted, a creditor can not avail himself of the provisions of this subsection. — *In re Fan Wa Shan*, (1908), 3 H. K. L. R. (Bankr.) 6.

Nomination, appointment, etc., of trustee. 20. 1. At any time prior to adjudication the creditors may, by ordinary resolution, nominate some fit person to be trustee in the bankruptcy, and on making the adjudication the Court shall appoint the creditors' nominee or, if dissatisfied with the nomination, or if there is no nomination, some other person to be trustee. The Official Receiver may be appointed trustee, if the Court thinks fit. 2. A trustee other than the Official Receiver shall give such security as the Court may direct.

Imp. § 21.

Committee of inspection. 21. 1. At the first or any subsequent meeting the creditors may, by ordinary resolution, appoint from among the creditors qualified to vote or the holders of general proxies or general powers of attorney a committee of inspection, consisting of three persons, for the purpose of superintending the administration of the bankrupt's property by the trustee. 2. Any two members of the committee may act. 3. On a vacancy occurring by death, resignation, incapaci-

ty, or otherwise, the trustee shall summon a meeting of creditors for the purpose of filling the vacancy, but the continuing members may act notwithstanding the vacancy. 4. If there is no committee of inspection, any act or thing or any direction or permission by this Ordinance authorized or required to be done or given by the committee may be done or given by the Court on the application of the trustee.

Imp. § 22.

Power to accept composition or scheme after adjudication, etc. 22. 1. Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by special resolution, resolve to entertain a proposal for a composition or scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication. 2. When a composition or scheme is approved by the Court after adjudication, or if the Court is satisfied, by fresh evidence or otherwise, that the debtor ought not to have been adjudged bankrupt, or when the debts of the bankrupt are all paid in full, with interest, the Court may annul the adjudication, but such annulment shall not invalidate or affect acts theretofore done by the Official Receiver, trustee, or manager, or any person acting under their authority or under the authority of the Court.

Imp. § 23.

Control over person and property of debtor.

Duties of debtor as to discovery and realization of property. 23. 1. Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require. 2. He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the Official Receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the Official Receiver, special manager, trustee, or any creditor or person interested. 3. He shall, if adjudged bankrupt, aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors. 4. If a debtor wilfully fails to perform the duties imposed on him by this section or to deliver up possession of any part of his property which is divisible among his creditors under this Ordinance and which is for the time being in his possession or under his control, to the Official Receiver, or to the trustee, or to any person authorized by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court and may be punished accordingly.

Imp. § 24.

Arrest of debtor and seizure of his property. 24. 1. The Court may, by warrant, cause a debtor to be arrested and any books, papers, money, and goods in his possession to be seized, and him and them safely kept until such time as the Court may order, under the following circumstances: a) If, after a bankruptcy notice has been issued under this Ordinance or after the presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy against him; b) If, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the Official Receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or any books, documents, or writings which might be of use to his creditors in the course of his bankruptcy; c) If, after service of a bankruptcy petition on him or after a receiving order has been made against him, he removes any goods in his possession above the value of twenty-five dollars, without the leave of the Official Receiver or trustee; d) If, without good cause shown, he fails to attend any examination ordered by the Court; and e) If

there is probable reason for believing that the debtor has committed an offence punishable under this Ordinance. 2. When an order of committal is made against a debtor or other person for disobeying any order of the Court or of the Official Receiver or trustee to do some particular act or thing, the Court may direct that the order of committal shall not be issued provided that such debtor or person, as the case may be, obeys the previous order within a specified time. 3. No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Ordinance relating to fraudulent preferences. 4. At any time after a receiving order has been made, the Court may, if it thinks fit, issue a warrant for the seizure and detention of any books, papers, money, or goods in the debtor's possession.

Imp. § 25. Security given for the appearance of a debtor will not be released until such appearance is no longer required for any purpose. — *In re Tsoi Chung Lee, Ex parte Lo Tui Chau*, (1906), 2 H. K. L. R. (Bankr.) 21.

Re-direction of debtor's letters, etc. 25. Where a receiving order is made against a debtor, the Court, on the application of the Official Receiver or trustee, may from time to time order that, for such time not exceeding three months as the Court thinks fit, telegrams, post letters, and parcels addressed to the debtor at any specified place or places shall be re-directed, sent, or delivered by the agent of the telegraph company, or the Colonial Postmaster-General, or the officers acting under him to the Official Receiver or the trustee or otherwise, as the Court may direct, and the same shall be done accordingly.

Imp. § 26.

Discovery of debtor's property. 26. 1. The Court may, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, his dealings, or property, and the Court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property. 2. If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination. 3. The Court, by itself or by a Commissioner appointed for the purpose, may examine upon oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealing or property. 4. If any person, on examination, admits that he is indebted to the debtor, the Court may, on the application of the Official Receiver or trustee, order him to pay to the Receiver or trustee, at such time and in such manner as the Court may think proper, the amount admitted or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination. 5. If any person, on examination, admits that he has in his possession any property belonging to the debtor, the Court may, on the application of the Official Receiver or trustee, order him to deliver to the Official Receiver or trustee such property or any part thereof at such time, and in such manner, and on such terms as to the Court may seem just. 6. The Court may, if it thinks fit, order that any person who, if in the Colony, would be liable to be brought before it under this section shall be examined by a commissioner appointed for the purpose in any place out of the Colony. 7. In the case of the death of the debtor or his wife or of a witness whose evidence has been duly taken under this Ordinance, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall in all legal proceedings be admitted as evidence of the matters therein deposed to, saving all just exceptions.

Imp. § 27.

Discharge of bankrupt.

Proceedings for and on discharge of bankrupt. 27. 1. A bankrupt may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall be heard in open Court. 2. Where the bankrupt does not of his

own accord, within such time as the Court may deem reasonable, apply for his discharge, the Court may, of its own motion or on the application of the trustee or of any creditor who has proved, make an order calling upon the bankrupt to come up for his discharge on a day to be fixed by the Court, and, on due service of the order, if the bankrupt does not appear on the day fixed thereby, the Court may make such order as it thinks fit, subject to the provisions of this section. 3. On the hearing of the application or on the day fixed for the bankrupt to come up for his discharge as aforesaid, the Court, subject to the provisions hereinafter contained, may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt or with respect to his after-acquired property: Provided that the Court shall refuse the discharge in all cases where the bankrupt has committed any misdemeanour under this Ordinance, and shall, on proof of any of the facts hereinafter mentioned, either refuse the order, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any such conditions aforesaid. 4. The facts hereinbefore referred to are: a) That the bankrupt, with intent to conceal the true state of his affairs, has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy; b) That the bankrupt has carried on trade by means of fictitious capital; c) That the bankrupt has continued to trade after knowing himself to be insolvent; d) That the bankrupt has contracted any debt provable in the bankruptcy without having, at the time of contracting it, any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it; e) That the bankrupt has brought on his bankruptcy by rash and hazardous speculations or unjustifiable extravagance in living; f) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him; g) That the bankrupt has, within four months next preceding the date of the receiving order, when unable to pay his debts as they became due, given an undue preference to any of his creditors; h) That the bankrupt has on any previous occasion been adjudged bankrupt or made a statutory composition or arrangement with his creditors; i) That the bankrupt has been guilty of any fraud or fraudulent breach of trust; j) That the bankrupt has, since the commencement of the bankruptcy proceedings, misconducted himself in connection with such proceedings; and k) That a dividend or dividends of 50 per cent. has or have not been paid or will not, in the opinion of the trustee, be payable on the debts proved. 5. The Court may, on proof to its satisfaction of the facts mentioned in paragraphs (a), (b), (c), (d), (e), or (f) of the last preceding subsection, summarily sentence the bankrupt to imprisonment, with or without hard labour, for any term not exceeding one year. 6. Notice of the appointment by the Court of the day for hearing the application for discharge shall be gazetted and published in at least one local newspaper not less than fourteen days at least before the day so appointed. The Court may hear the Official Receiver, the trustee, and any creditor. At the hearing the Court may put such questions to the debtor and receive such evidence as it may think fit. 7. The Court may, as one of the conditions referred to in this section, allow judgment to be entered against the bankrupt by the trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, but in such case execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has, since his discharge, acquired property or income available for payment of his debts. 8. A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realization and distribution of such of his property as is vested in the trustee, and, if he fails to do so, he shall be guilty of a contempt of Court, and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done subsequent to the discharge but before its revocation.

Imp. 53 & 54 Vic. c. 71, § 8. See *In re Fan Wa Shan*, (1908), 3 H. K. L. R. (Bankr.) 6.

Effect of order of discharge. 28. 1. An order of discharge shall not release the bankrupt from any debt on a recognizance or bail-bond to the Crown or to a public officer as such or from any debt with which the bankrupt may be chargeable

at the suit of any public officer on behalf of the Crown, and the bankrupt shall not be discharged from such excepted debts unless the Colonial Treasurer certifies in writing his consent to his being discharged therefrom. 2. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party or from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party. 3. An order of discharge shall release the bankrupt from all other debts provable in bankruptcy. 4. An order of discharge shall not release any person who, at the date of the receiving order, was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him or any person who was surety or in the nature of a surety for him.

Imp. § 30.

Annulling of adjudication in certain cases. 29. 1. Where, in the opinion of the Court, a debtor ought not to have been adjudged bankrupt or where it is proved, to the satisfaction of the Court, that the debts of the bankrupt have been paid in full or fully secured to the satisfaction of the Court, the Court may, on the application of any person interested, by order annul the adjudication. 2. Notice of the order annulling an adjudication shall be forthwith gazetted. 3. Where an adjudication is annulled, all sales and dispositions of property and payments duly made and acts theretofore done by the Official Receiver, trustee, manager, or other person acting under their authority or by the Court shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or, in default of any such appointment, revert to the debtor for all his estate or interest therein, on such terms and subject to such conditions, if any, as the Court may, by order, declare.

Imp. § 35.

Part II. Administration of Property.

Proof of debts.

Mode of proving debt. 30. 1. A debt may be proved, immediately after the making of a receiving order, by delivering or sending through the post to the Official Receiver or to the trustee an affidavit verifying the debt made by the creditor or by some person on his behalf having knowledge of the necessary facts. 2. The affidavit shall state whether the creditor is or is not a secured creditor. 3. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized. 4. If a secured creditor surrenders his security for the benefit of the creditors, he may prove for his whole debt. 5. If a secured creditor neither realizes nor surrenders his security, he may in his proof set a value on it and prove for the balance, but when it is so valued the trustee may, at any time before it is realized, redeem it for the benefit of the estate on payment of the amount of the valuation, or the Court, on the application of the trustee, may order the realization of the security by sale by public auction or otherwise: Provided that the creditor may at any time, by notice in writing, require the Official Receiver or trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the Official Receiver or trustee does not, within six months after receiving notice as aforesaid, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption or other interest in the property comprised in the security which is vested in the Official Receiver or trustee shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued. 6. By leave of the Court, a valuation as above provided for may be amended on such terms as the Court may think just, on proof that it was made bona fide on a mistaken estimate or that the security has increased or diminished in value since the prior valuation. 7. If a creditor's security is realized after valuation, the net amount realized shall, for the purposes of proof, be substituted for the amount of the valuation. 8. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the debtor is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court, be produced to the Official Receiver before the proof can be admitted either for voting or for dividend, and the amount of any dividend paid must be indorsed on the instrument. 9. Subject to the power of the Court to extend the time, the Official Receiver or trustee shall, within fourteen

days after receiving a proof, either admit it, or reject it wholly or in part, or require further evidence in support of it, and shall notify his decision to the creditors at the next general meeting. An appeal to the Court from the admission or rejection of a proof shall not lie after the expiration of one month from the date of the decision, unless the Court allows it for special reasons shown.

Imp. Sched. 11. The decision of the official receiver or trustee admitting the claim of a creditor is subject to revision by the Court. — In re Chung Shun Koo, Ex parte Sum Che Chuen, (1906), 2 H. K. L. R. (Bankr.) 15. Where a secured creditor has omitted to value his security, and proved and voted as an unsecured creditor, the Court may, if the effect of his vote has not been prejudicial to the debtor, be allowed to withdraw his proof and prove as a secured creditor. And semble, this will be allowed in every case where the status quo ante can be restored. — In re Chung Shun Koo, Ex parte Sum Che Chuen, (1906), 2 H. K. L. R. (Bankr.) 1. The debtor is not entitled to notice of the pendency of proceedings to reduce the claims of a creditor. — In re Chung Shun Koo, Ex parte Sum Che Chuen, (1906), 2 H. K. L. R. (Bankr.) 1. A creditor may rank as a secured creditor in respect of goods substituted for those originally pledged, where such substitution is made by an entry in the books of a godown. — In re The Hang Leng Cheong, Ex parte Hamburg-America Linie, (1906), 1 H. K. L. R. 212. For a case where under the facts creditors were held not to be secured creditors, see In re Lee King Shek, (1908), 3 H. K. L. R. (Bankr.) 1.

Description of debts provable. 31. 1. Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust shall not be provable in bankruptcy. 2. A person having notice of any act of bankruptcy available against the debtor shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice. 3. Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy. 4. The value of any debt or liability provable as aforesaid which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value may be estimated by the Court, on the application of the trustee. The amount so estimated shall be deemed a debt provable in bankruptcy, but if the Court is of opinion that the debt or liability can not be fairly estimated, it shall not be deemed provable in bankruptcy. 5. "Liability" shall, for the purposes of this Ordinance, include any compensation for work or labour done, any obligation or probability of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of, money or money's worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; or as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

Imp. § 37. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied. — Ord. No. 5 of 1906, § 7.

Mutual credit and set-off. 32. Where there have been mutual credits, mutual debts, or other mutual dealings between the debtor against whom a receiving order has been made and a creditor, the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account and no more shall be claimed or paid on either side respectively: Provided that a creditor shall have no set-off in respect of any credit given to the debtor after the creditor has had notice of an act of bankruptcy committed by the debtor and available against him for adjudication.

Imp. § 38.

Appropriation of assets.

Payment of preliminary expenses. 33. 1. The assets remaining after payment of the actual expenses incurred in realizing any of the assets of the debtor shall, subject to any order of the Court, be liable to the following payments, which shall be made in the following order of priority, namely: a) The actual expenses incurred

by the Official Receiver in protecting the property or assets of the debtor or any part thereof and any expenses or outlay incurred by him or by his authority in carrying on the business of the debtor; b) The fees, percentages, and charges payable to, or costs, charges, and expenses incurred or authorized by, the Official Receiver; c) The remuneration of the special manager, if any; and d) The taxed costs of the petitioner, so far as the same may not have been disallowed by the Court. 2. When ever the Court is satisfied that property of a debtor in respect of whose estate a receiving order has been made has been preserved for the benefit of the creditors by means of legal proceedings brought by a creditor against the debtor without notice of any available act of bankruptcy committed by the debtor, the Court may, in its discretion, order the payment of the costs of such legal proceedings or any part of them (taxed as between party and party) out of the estate, with the same priority as to payment as is herein provided in respect of the taxed costs of the petitioner.

Imp. §§ 58—64. A creditor may be entitled under subsection (2) even though he had notice of an available act of bankruptcy. — In re How Fuk Cheung Firm, ex parte The Hongkong Yuen Bank, (1906), 1 H. K. L. R. 209.

Priority of payment of debts. 34. 1. In the distribution of the property of a bankrupt there shall be paid in priority to all other debts: a) All local rates due from the bankrupt at the date of the receiving order, having first become due and payable within twelve months next before such date; b) The wages or salary of any clerk or servant in respect of services rendered to the bankrupt during the four months next preceeding the date of the receiving order and not exceeding three hundred dollars; c) The wages of any labourer or workman not exceeding one hundred dollars, whether payable for time or piece-work, in respect of services rendered to the bankrupt during the four months immediately preceding the receiving order; and d) Such part of any premium paid by or on behalf of any apprentice or articulated clerk under service to the bankrupt as the Court may order. 2. The foregoing debts shall rank equally between themselves and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves. 3. The joint estate of partners shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. 4. Subject to the provisions of this Ordinance, all debts proved in the bankruptcy shall be paid *pari passu*. 5. If there is any surplus after payment of the debts, it shall be applied in payment of interest from the date of the receiving order at the rate of eight dollars per centum per annum on all debts proved in the bankruptcy.

Imp. § 40.

Distress for rent. 35. The landlord or other person to whom any rent is due from the bankrupt may, subject to the provisions of the *Distrain for Rent Ordinance, 1883*, at any time either before or after the commencement of the bankruptcy, distrain upon the goods and chattels of the bankrupt for the rent due: Provided that if such distress is levied after the commencement of the bankruptcy, it shall be available only for six months' rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due may prove under the bankruptcy for the surplus due for which the distress may not have been available.

Imp. § 42.

Property available for payment of debts.

Relation back of trustee's title. 36. The bankruptcy of a debtor shall be deemed to have relation back to and to commence at the time of the act of bankruptcy being committed on which the receiving order was made, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and to commence at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within four months next preceeding the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

Imp. § 43.

Description of property divisible among creditors. 37. The property of the bankrupt divisible among his creditors (in this Ordinance referred to as the property of the bankrupt) shall not comprise the following particulars: 1. Property held by the bankrupt on trust for any other person; or 2. The tools, if any, of the bankrupt's trade and the necessary wearing apparel and bedding of himself and his family dependent on and residing with him, to a value, inclusive of tools, apparel, and bedding, not exceeding in the whole one hundred dollars. But it shall comprise the following particulars: 1. All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy or may be acquired by or devolve on him before his discharge; 2. The capacity to exercise, and to take proceedings for exercising, all such powers in, over, or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and 3. All goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt in his trade or business by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof: Provided that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section.

Imp. § 44.

Effect of bankruptcy on antecedent transactions.

Restriction of rights of execution creditor. 38. 1. Where a creditor has issued execution against the property of a debtor, he shall not be entitled to retain the benefit of the execution against the trustee in bankruptcy of the debtor, unless he has completed the execution before the date of the receiving order and before notice of the presentation of any bankruptcy petition by or against the debtor or of the commission of any available act of bankruptcy by the debtor. 2. For the purposes of this Ordinance, an execution shall be deemed to be completed: a) In the case of goods, chattels, or other moveable property in the possession of the debtor or of negotiable instruments, by seizure and sale; b) In the case of goods, chattels, or other moveable property to which the debtor is entitled subject to a lien or right of some person to the immediate possession thereof, by attachment by prohibitory order and sale; c) In the case of lands, houses, or other immoveable property or any interest therein, either at law or in equity, by attachment by prohibitory order and due registration thereof in the Land Office; d) In the case of an attachment of a debt not being a negotiable instrument, by receipt of the debt; e) In the case of shares in any public company or corporation, by attachment by prohibitory order; f) In the case of property in the custody or under the control of any public officer in his official capacity or in custodia legis, by attachment by prohibitory order duly obtained and served; and g) In the case of any equitable interest in lands, houses, or other immoveable property, by the appointment of a receiver or manager.

Imp. § 45. Where money is paid into Court in garnishment proceedings, and before it is paid out a petition in bankruptcy is filed against the debtor and the attaching creditor has notice thereof, he must pay over to the trustee the amount so received. — *In re Lai Fung Bank*, (1905), 1 H. K. L. R. 24.

Duty of bailiff. 39. 1. Where the goods of a debtor are taken in execution, and before the sale thereof notice is served on the bailiff that a receiving order has been made against the debtor, the bailiff shall, on request, deliver the goods to the Official Receiver or trustee under the order, but the costs of the execution shall be a charge on the goods so delivered, and the Official Receiver or trustee may sell the goods or an adequate part thereof for the purpose of satisfying the charge. 2. Where the goods of a debtor are sold under an execution in respect of a judgment for a sum exceeding one hundred dollars, the bailiff shall deduct the costs of the execution from the proceeds of sale and pay the balance into Court, and if, within fourteen clear days of such sale, a bankruptcy petition is presented by or against the debtor, the said balance shall remain in Court until after the hearing of the petition, and if the debtor is adjudged bankrupt the balance shall be paid out to the trustee in the bankruptcy, who shall be entitled to retain the same as against the execution creditor, but otherwise it shall be dealt with as if no bankruptcy petition had been presented. 3. An execution completed as aforesaid is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the property of the debtor in

good faith under a sale shall in all cases acquire a good title to it as against the trustee in bankruptcy.

Imp. § 46.

Avoidance of voluntary settlements. 40. 1. Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of the settlement on the execution thereof. 2. Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not, at the date of his marriage, any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the covenant or contract, be void against the trustee in the bankruptcy. 3. "Settlement" shall, for the purposes of this section, include any conveyance, or transfer of property.

Imp. § 47. The burden of proving that the preference is fraudulent is on the trustee. — In re Lee King Shek, ex parte Pang Sui Tong, (1908), 3 H. K. L. R. 14.

Avoidance of preferences in certain cases. 41. 1. Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a bankruptcy petition presented within four months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy. 2. This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Imp. § 48. Cp. in re Lee King Shek, ex parte Pang Sui Tong, (1908), 3 H. K. L. R. 14.

Protection of bona fide transactions without notice. 42. Subject to the preceding provisions of this Ordinance with respect to the effect of bankruptcy on an execution or attachment and with respect to the avoidance of certain settlements and preferences, nothing in this Ordinance shall invalidate, in the case of a bankruptcy: 1. Any payment by the bankrupt to any of his creditors; or 2. Any payment or delivery to the bankrupt; or 3. Any conveyance or assignment by the bankrupt for valuable consideration; or 4. Any contract, dealing, or transaction by or with the bankrupt for valuable consideration. Provided that both of the following conditions are complied with, namely: 1. The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and 2. The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, a signment, contract, dealing, or transaction was made, executed, or entered into has not, at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

Imp. § 49.

Realization of property.

Possession of property by trustee. 43. 1. The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt and all other parts of his property capable of manual delivery. 2. The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the Court, and the Court may, on his application, enforce such acquisition or retention accordingly. 3. Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books

of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt. 4. Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee. 5. Any officer, clerk, servant, compradore, employee, or person acting as banker, attorney, or agent of a bankrupt shall pay and deliver to the trustee all moneys and securities in his possession or power which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of Court and may be punished accordingly, on the application of the trustee.

Imp. § 50.

Seizure of property of bankrupt. 44. Any person acting under a warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt or of any other person, and, with a view to such seizure, may break open any house, building, or room of the bankrupt, where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and when the Court is satisfied that there is reason to believe that any property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any constable or officer of the Court who may execute it accordingly.

Imp. § 51.

Sale of property out of the Colony. 45. Where the bankrupt is possessed of any property out of the Colony, the trustee shall require him to join in selling the same for the benefit of the creditors and to sign all necessary authorities, powers, deeds, and documents for the purpose, and if and so often as the bankrupt refuses to do so, he may be punished for a contempt of Court.

Appropriation of portion of pay or salary of certain officers. 46. When a bankrupt is an officer of the Navy or Army or an officer or clerk otherwise employed or engaged in the Civil Service of the Government, the trustee shall receive for distribution among the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the Chief Officer of the Department under which the pay or salary is enjoyed, may direct.

Imp. § 53.

Vesting and transfer of property. 47. 1. Until a trustee is appointed, the Official Receiver shall be the trustee for the purposes of this Ordinance, and, immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee. 2. On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed. 3. The property of the bankrupt shall pass from trustee to trustee, including under that term the Official Receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment or transfer whatever.

Imp. § 54.

Disclaimer of onerous property. 48. 1. When any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants or liabilities, or of shares or stock in companies, or of unprofitable contracts, or of any other property that is unsaleable or not readily saleable by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within six months after the appointment of a trustee, disclaim the property: Provided that where any such property has not come to the knowledge of the trustee within three months after such appointment, he may disclaim such property at any time within three months after he first became aware thereof. 2. The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person. 3. A trustee shall not be entitled to disclaim a lease without leave of the Court, and the Court may, before or on granting such leave, require such notices

to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenants' improvements, and other matters arising out of the tenancy as the Court may think just. 4. The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, after such application as aforesaid, does not, within the said period or extended period, disclaim the contract, he shall be deemed to have adopted it. 5. The Court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract or otherwise as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy. 6. The Court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Ordinance in respect of any disclaimed property, and on hearing such persons as it may think fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid or a trustee for him, and on such terms as the Court may think just; and, on such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf, without any conveyance or assignment for the purpose: Provided always that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the bankrupt except on the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or under-lessee declining to accept a vesting order on such terms shall be excluded from all interest in and security upon the property; and if there is no person claiming under the bankrupt who is willing to accept an order on such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable, either personally or in a representative character and either alone or jointly with the bankrupt, to perform the lessee's covenants in such lease, freed and discharged from all estates, encumbrances, and interests created therein by the bankrupt. 7. Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

Imp. § 55. A lease can not be disclaimed without leave of the Court. The English Rule in Bankruptcy, § 320, being inconsistent with subsection (3) is not in force. — *In re Chung Shun Koo, ex parte Hongkong, etc., Land Co.*, (1906), 2 H. K. L. R. (Bankr.) 18.

Powers of trustee to deal with property. 49. Subject to the provisions of this Ordinance and to any general or special order of the Court, the trustee may do all or any of the following things: 1. Sell all or any part of the property of the bankrupt (including the good-will of the business, if any, and the book debts due or growing due to the bankrupt) by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels; 2. Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof; 3. Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt; and 4. Exercise any powers the capacity to exercise which is vested in the trustee under this Ordinance, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Ordinance.

Imp. § 56.

Powers exercisable by trustee with permission of committee of inspection. 50. 1. The trustee may, with the permission of the committee of inspection, do all or any of the following things: a) Carry on the business, if any, of the bankrupt so far as may be necessary for the beneficial winding-up of the same: b) Bring,

institute, or defend any action or other legal proceeding relating to the property of the bankrupt; c) Employ a solicitor or other agent to take any proceedings or do any business sanctioned by the committee; d) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the committee may think fit; e) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts; f) Refer any dispute to arbitration and compromise all debts, claims, and liabilities on such terms as may be agreed upon; g) Make such compromise or other arrangement as may be thought expedient with creditors or persons claiming to be creditors in respect of any provable debts; h) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt made or capable of being made on the trustee by any person or by the trustee on any person; and i) Divide in its existing form among the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, can not be readily or advantageously sold. 2. The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought.

Imp. § 57.

Distribution of property.

Declaration and distribution of dividends. 51. 1. Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends among the creditors who have proved their debts. 2. The first dividend, if any, shall be declared within four months after the conclusion of the first meeting of creditors, unless there is a sufficient reason, approved by the Court, for postponing the declaration to a later date, and subsequent dividends shall, in the absence of sufficient reasons to the contrary, be declared and distributed at intervals of not more than six months. 3. At least one month before declaring a dividend, the trustee shall cause notice of his intention to do so to be gazetted, and shall also post a notice in writing to each creditor mentioned in the bankrupt's statement who has not proved his debt. 4. When the trustee has declared a dividend, he shall cause a notice to be gazetted showing the amount of the dividend, and when and how it is payable.

Imp. § 58.

Joint and separate dividends. 52. Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm or any of them shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

Imp. § 59.

Provision for creditors residing at a distance, etc. 53. 1. In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements or otherwise to be due to persons resident in places so distant from the place where the trustee is acting that, in the ordinary course of communication, they have not had sufficient time to tender their proofs or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined. 2. He shall also make provision for any disputed proofs or claims and for the expenses necessary for the administration of the estate or otherwise, and, subject to the preceding provisions, he shall distribute as dividend all money in hand.

Imp. § 60.

Right of creditor proving after dividend. 54. A creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any money for the time being in the hands of the trustee, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Imp. § 61.

Final dividend. 55. When the trustee has realized all the property of the bankrupt or so much thereof as can be realized without needlessly protracting the trustee-

ship, he shall declare a final dividend, which dividend shall be so specified in *The Gazette* notice and in the notices to creditors, and any creditor who has not proved shall be excluded from such dividend unless he proves his debt before the dividend or any part thereof is paid: Provided that the Court may, on the application of any such creditor, postpone the payment of such dividend or part of it for such time as may be reasonably necessary for such creditor to establish his claim.

Imp. § 62.

Barring of action for dividend. 56. No action for a dividend shall lie against a trustee, but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld and the costs of the application.

Imp. § 63.

Employment of and allowance to bankrupt. 57. 1. The trustee, with the permission of the committee of inspection or of the Court, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or any part thereof or to carry on the trade, if any, of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct. 2. The Court, on the application of the trustee, may, if it thinks fit, make an allowance out of the estate to the bankrupt for the support of himself and his family or in consideration of his services in assisting the trustee.

Imp. § 64.

Right of bankrupt to surplus. 58. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Ordinance provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

Imp. § 65.

Part III. Matters Incidental to Trustee's Duties.

Costs and charges.

Costs and remuneration. 59. 1. All costs of or incident to proceedings in bankruptcy shall, subject to the provisions of this Ordinance, be in the discretion of the Court. 2. Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required to be performed by himself. 3. No solicitor's bill of costs shall be allowed in the trustee's accounts unless it has been taxed by the proper officer. 4. The remuneration of any trustee, manager, or receiver or the allowance to any bankrupt, or any part of such remuneration or allowance, may, if the Court so orders, be forfeited for misconduct.

Imp. §§ 72, 73.

Payment of moneys into bank. 60. 1. The Official Receiver shall open in his name as Official Receiver an account at a bank approved by the Governor, and shall pay to the credit thereof all sums received by him as such Official Receiver or as trustee, and every trustee in a bankruptcy, other than the Official Receiver, receiving money as such trustee shall open an account at such bank in the name of the debtor's estate, and shall pay to the credit of such account all sums which may from time to time be received by him as such trustee. 2. No trustee in a bankruptcy shall pay any money received by him as trustee into his private banking account, or use it otherwise than in the administration of the estate, on any pretence whatever. 3. Any trustee paying money into his private banking account, or using it otherwise than in the administration of the estate, or retaining in his hands for more than a week, without the leave of the Court previously obtained, a sum exceeding one hundred dollars, or without explaining such retention to the satisfaction of the Court, may, without prejudice to any other liability, be dismissed from office without remuneration, and may be ordered by the Court to pay any expenses to which the creditors may be put in consequence of his dismissal.

Imp. §§ 74, 75.

Record and account to be kept by trustee. 61. 1. The trustee shall keep a record in writing in which he shall enter a minute of all proceedings had and resolutions passed at any meeting of creditors or of the committee of inspection and a statement of all negotiations and proceedings necessary to give a correct view of the

management of the bankrupt's property. 2. He shall also keep an account, to be called "The Estate Account," in the form of an ordinary debtor and creditor account, in which he shall enter from day to day all his receipts and payments as trustee. 3. The trustee shall produce at every meeting of creditors and at every meeting of the committee of inspection the record and account above mentioned, and also the pass-book of the estate's bank account, and such documents shall be open to the inspection of any creditor at all reasonable times.

Imp. § 80.

Audit of trustee's accounts and order therein. 62. 1. The trustee shall, at any time the Court may order and not less than once in each year during his tenure of office, deposit in the Registry of the Court an account of his receipts and payments verified by affidavit. 2. Such accounts shall be examined and audited by the Registrar or by any person named by the Court or the Court may itself examine them, and it shall be the duty of the trustee to furnish all such vouchers or information as may be necessary for such audit or examination. 3. The Court may, after hearing the explanation, if any, of the trustee, make such order as it may think just for compelling the trustee to make good any loss to the estate which, after such audit or examination, may appear to the Court to have been occasioned by any misfeasance, neglect, or improper omission of the trustee.

Imp. § 78.

Fees and percentages and remuneration of Official Receiver and trustee. 63. The fees and percentages to be charged in respect of proceedings under this Ordinance and the remuneration of the Official Receiver and the trustee shall be as mentioned in the second Schedule to this Ordinance: Provided that such Schedule may from time to time be altered by rule of Court.

Imp. § 128.

Costs where joint estate insufficient. 64. 1. Where the joint estate of any co-debtors is insufficient to defray any costs or charges properly incurred in respect thereof, the Court, on the application of the trustee, may order such costs or charges to be paid out of the separate estates of such co-debtors or any one or more of them. 2. The Court may also order any costs or charges properly incurred for any separate estate to be paid out of the joint estate, if, in the opinion of the Court, it is just to do so.

Release of trustee.

Conditions of trustee's release. 65. 1. When the trustee has realized all the property of the bankrupt or so much thereof as can, in his opinion, be realized without needlessly protracting the trusteeship, and has distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned or been removed from office, he may apply to the Court for his release, and if all the requirements of the Court with respect to accounts and with respect to any order of the Court against the trustee have been fulfilled, the Court may make an order for the release accordingly. 2. Where the release of the trustee is withheld, the Court may, on the application of any creditor or person interested make such order as it may think just, charging the trustee with the consequence of any act or default he may have committed or made contrary to his duty. 3. An order of the Court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact. 4. Where the trustee has not previously resigned or been removed his release shall operate as a removal of him from his office, and thereupon the Official Receiver shall be the trustee.

Imp. § 82.

Official name.

Official name and general powers of trustee. 66. The trustee may sue and be sued by the official name of "The Trustee of the property of A. B., a bankrupt," and in that name may hold property of every description, make contracts, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Imp. § 83.

Miscellaneous matters.

Removal of trustee. 67. If the Court is of opinion that the trustee is guilty of misconduct or neglect, or if the trustee is insolvent, or if the Court is satisfied that the interests of the creditors require it, the Court may remove the trustee from office and appoint some other person in his place.

Imp. § 86.

Directions to trustee. 68. 1. The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and the directions given at any such general meeting shall, subject to the provisions of this Ordinance, be followed as far as possible, notwithstanding that they may conflict with the directions of the committee of inspection. 2. The trustee may apply to the Court for directions in relation to any particular matter arising under the bankruptcy.

Imp. § 89.

Appeal to the Court against trustee. 69. 1. If the bankrupt, or any creditor, or any other person is aggrieved by any act or decision of the trustee, he may appeal to the Court, and the Court may confirm, reverse, or modify the act or decision complained of and make such order in the premises as it may think just. 2. Any such appeal shall be brought within a week of the act or decision complained of: Provided that the Court may, subject to such conditions as it may think just, allow an appeal at any time on good cause shown.

Imp. § 90.

Disobedience of order of the Court. 70. Where default is made by the trustee, the debtor, or any other person in obeying any order or direction made or given by the Court, the Court may make an immediate order for the committal for contempt of Court of such trustee, debtor, or other person. Provided that the power given by this section shall be deemed to be in addition to and not in substitution for any other right, remedy, or liability in respect of such default.

Imp. § 102 (5).

Part IV. Jurisdiction and Procedure.

Jurisdiction to be exercised by the Court. 71. 1. The Court shall deal with bankruptcy petitions, and the rules of the Court for the time being for regulating the civil procedure of the Court shall, so far as the same may be applicable and not inconsistent with the provisions of this Ordinance, be applied to bankruptcy proceedings; and every order of the Court made in connection with bankruptcy proceedings may be enforced in the same way as a judgment of the Court made in respect of any civil proceedings may be enforced. 2. The Registrar shall, in cases of urgency, have power to make interim orders and to hear and determine unopposed or ex parte applications, and any order so made shall, subject to appeal to the Court, be deemed to be an order of the Court. 3. Every order of the Court shall be subject to appeal to the Full Court.

Imp. § 92. There is no provision corresponding with § 102 of the Imperial Act. Nevertheless the Court has power to determine the question of the right of a stranger to retain possession of a security as against the trustee. — *In re Allana*, (1909), 4 H. K. L. R. 152.

Consolidation of petitions. 72. When two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, on such terms as the Court may think fit.

Imp. § 106.

Continuance on death of debtor. 73. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Imp. § 108.

Power to stay proceedings. 74. The Court may at any time, for sufficient reason stay the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just.

Imp. § 109.

Case of two or more respondents. 75. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

Imp. § 111.

Action by trustee and partner of bankrupt. 76. Where a member of a partnership is adjudged bankrupt, the Court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which such action relates shall be void; but notice of the application to commence the action shall be given to him and he may show cause against it, and, on his application, the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof in such manner as the Court may direct.

Imp. § 113.

Action on joint contract. 77. Where a bankrupt is a contractor in respect of any contract jointly with any other person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

Imp. § 114.

Proceedings in partnership name. 78. 1. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Ordinance in the name of the firm, and in such case all nominal and dormant partners shall be included in the adjudication, and all their joint estate and the separate estate of each of them shall vest in the trustee: Provided that a receiving order shall not be made against a corporation or against a registered joint-stock company. 2. The Court, on application by any person interested in any bankruptcy proceedings by or against a partnership, may order the names of the persons who are partners in such firm to be disclosed in such manner and verified upon oath or otherwise as the Court may direct; and, in case of dispute, the Court shall settle who are the partners in any firm liable to adjudication, and for this purpose may order such notices to be given or such inquiries made or issues tried as it may deem just and necessary.

Imp. §§ 115, 123.

Making of rules and forms. 79. The Chief Justice may from time to time make general rules and forms for carrying into effect the objects of this Ordinance.

Imp. § 127.

Part V. Supplemental Provisions.

Unclaimed funds or dividends.

Disposal of unclaimed funds and dividends. 80. 1. When the trustee has under his control any unclaimed dividend which has remained unclaimed for more than six months or when, after making a final dividend, the trustee has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay the same to the Registrar of the Court, who shall carry the same to an account to be termed "The Bankruptcy Estates Account." The Registrar's receipt for the money so paid shall be sufficient discharge to the trustee in respect thereof. 2. The trustee, whether he has obtained his release or not, may be called upon by the Court to account for any unclaimed funds or dividends, and any failure to comply with the requisitions of the Court in this behalf may be dealt with as a contempt of Court. 3. Any person claiming to be entitled to any moneys paid into the Bankruptcy Estates Account may, within five years of the date when the same was so paid in, apply to the Registrar for payment to him of the same, and the Registrar, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due. Any person dissatisfied with the decision of the Registrar may appeal to the Court. 4. After any money has remained unclaimed in the Bankruptcy Estates Account for a period of five years, the Registrar shall pay the same over to the Colonial Treasurer for the use of the Crown, and all claims thereon shall be thenceforth barred.

Imp. § 74.

Administration of estates according to law of bankruptcy.

Administration in bankruptcy of estate of person dying insolvent. 81. 1. A creditor of a deceased debtor whose estate is shown to be insufficient for the payment of the debts owing by the deceased person may present a petition (the facts alleged in which shall be verified by affidavit) to the Court praying for the administration of the estate of the deceased person according to the law of bankruptcy, and the

Court, if satisfied that the estate is insufficient for the payment of the debts of the deceased person, shall make an order accordingly. 2. The petition shall be served on the personal representative of such deceased person, or, if there is none in the Colony, on the Official Administrator of intestate estates. 3. On an order being made for the administration in bankruptcy of the deceased debtor's estate, the Court shall appoint a trustee in whom all the debtor's property shall vest for the purpose of distribution. 4. Subject to the provisions of this section, the provisions of Parts II. and III. shall, so far as the same are applicable, apply to the case of an order for administration under this section in like manner as to an adjudication of bankruptcy. 5. In the administration of the estate of the deceased debtor under an order for administration, funeral and testamentary expenses shall be deemed a preferential debt. 6. Notice of the presentation of a petition under this section shall, in the event of an order for administration being made thereon, be deemed equivalent to notice of an act of bankruptcy, and any transfer, disposition, charge, delivery, contract, or payment made, relating to, or affecting the property to be administered under the order, and any execution or attachment had against the said property or any part thereof, after notice of the presentation of such petition, shall be void as against the trustee. Save as aforesaid, nothing in this section shall invalidate any payment made or any act or thing done or suffered in good faith before the making of the order for administration.

Imp. § 125. In the administration by the Court of the assets of any person who may die after the commencement of this Ordinance and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person may come in under the judgment or order for the administration of such estate, and make such claims against the same as they may respectively be entitled to by virtue of this Ordinance. — Ord. No. 2 of 1901, § 4.

Offences.

Punishment of fraudulent debtors. 82. 1. Any person against whom a receiving order has been made, whether adjudged bankrupt or not, shall, in each of the cases following, be guilty of a misdemeanour, and, on conviction thereof, shall be liable to imprisonment, with or without hard labour, for any term not exceeding two years; that is to say: a) If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee all his property, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as may have been disposed of in the ordinary way of his trade or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud; b) If he does not deliver up to the trustee or as he may direct all such part of his property as is in his custody or under his control and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud; c) If he does not deliver up to the trustee or as he may direct all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud; d) If, after the presentation of a bankruptcy petition by or against him or within four months next before such presentation, he conceals any part of his property to the value of fifty dollars or upwards, unless the jury is satisfied that he had no intent to defraud or to conceal any debt due to or from him; e) If, after the presentation of a bankruptcy petition by or against him or within four months next before such presentation, he fraudulently removes any part of his property to the value of fifty dollars or upwards; f) If he makes any material omission or misstatement in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud; g) If, knowing or believing that a false debt has been proved by any person under the bankruptcy or composition or scheme of arrangement, he fails for the period of one month to inform the trustee thereof; h) If, after the presentation of a bankruptcy petition by or against him, he prevents or is party to preventing the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law; i) If, after the presentation of a bankruptcy petition by or against him or within four months next before such presentation,

he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law; j) If, after the presentation of a bankruptcy petition by or against him or within four months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law; k) If, after the presentation of a bankruptcy petition by or against him or within four months next before such presentation, he fraudulently parts with, alters, or makes any omission, or is party to the fraudulently parting with, altering, or making any omission, in any document affecting or relating to his property or affairs; l) If, after the presentation of a bankruptcy petition by or against him or at any meeting of his creditors within four months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses; m) If, while undischarged, he obtains credit to the extent of one hundred dollars or upwards from any person without informing such person that he is an undischarged bankrupt; n) If, within four months next before the presentation of a bankruptcy petition by or against him, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same; o) If, within four months next before the presentation of a bankruptcy petition by or against him, he obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless the jury is satisfied that he had no intent to defraud; p) If, within four months next before the presentation of a bankruptcy petition by or against him, he pawns, pledges, or disposes of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud; and q) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy.

2. A person who has sent out of the Colony any property which he had obtained on credit and not paid for shall, until the contrary is proved, be deemed to have disposed of the same otherwise than in the ordinary way of his trade, if, such property not having been paid or accounted for at the date of the receiving order by the person to whom the same was sent, such last-mentioned person can not be found or does not pay or account for the same within a reasonable time after being called upon to do so by the trustee.

3. If any person against whom a receiving order is made, after the presentation of a bankruptcy petition by or against him or the service of a debtor's summons or bankruptcy notice on him, or within four months before such presentation or service, quits the Colony and takes with him, or attempts to take with him, or makes preparations for quitting the Colony and for taking with him, any part of his property, to the amount of one hundred dollars or upwards, which ought by law to be divided among his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of a misdemeanour punishable with imprisonment, with or without hard labour, for any term not exceeding two years.

4. If any person against whom a receiving order is made quits the Colony, with intent to avoid service of any petition or other process in bankruptcy, or to avoid examination in respect of his affairs, or otherwise to defeat, embarrass, or delay any proceedings against him in bankruptcy, he shall be liable to imprisonment not exceeding one year or to a fine not exceeding five hundred dollars. A person who, after the presentation of a bankruptcy petition by or against him, or the service of a debtor's summons on him, or within three months next before such presentation or service, quits the Colony shall (until the contrary is proved) be deemed to have quitted the Colony with such intent as is mentioned in this section.

5. Any person shall, in each of the cases following, be deemed guilty of a misdemeanor and, on conviction thereof, shall be liable to imprisonment with or without hard labour, for any term not exceeding one year, that is to say: a) If, in incurring any debt or liability, he has obtained credit under false pretences or by means of any other fraud; b) If he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property; c) If he has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months

before the date of any unsatisfied judgment or order for payment of money obtained against him; and d) If, after a receiving order has been made against him and whether he has been adjudicated bankrupt or not, the assets available for his unsecured creditors and for the costs of bankruptcy and administration do not together amount to twenty-five per cent on the unsecured debts proved, unless the jury is satisfied that the extent of his insolvency arose from his misfortune unaccompanied by dishonesty or reckless speculation or extravagance on his part.

Imp. 32 & 33 Vic. c. 62, §§ 11—13.

Punishment of creditor making false claim, etc. 83. If any creditor in any bankruptcy or composition with creditors under the provisions of this Ordinance wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be guilty of a misdemeanour punishable with imprisonment, with or without hard labour, for any term not exceeding one year.

Imp. 32 & 33 Vic. c. 62, § 14.

Prosecution of offences. 84. 1. If, in the course of any proceedings taken under any bankruptcy petition or on the representation of the trustee or of any creditor, it appears to the Court that there is reason to suppose that any person has been guilty of any offence under this Ordinance, the Court may order the prosecution of such person accordingly, and in any such case may order the person to be prosecuted into custody, if present, or, if not present, may grant a warrant for his arrest and detention until he can be taken before a magistrate to be dealt with according to law. 2. Where any person is liable under any other Ordinance, or under any Act of Parliament, or at common law to any punishment or penalty for any offence made punishable by this Ordinance, such person may be proceeded against under such other Ordinance, Act of Parliament, or at common law, or under this Ordinance, so that he be not punished twice for the same offence. 3. Where a debtor has been guilty of any criminal offence, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Imp. §§ 165—157.

Schedules.

Use of forms. 85. The forms in the first Schedule to this Ordinance, with such variations and addition as circumstances may require, may be used for proceedings under this Ordinance and shall, as regards the form thereof, be valid and sufficient.

Fees. 86. The fees mentioned in the second Schedule to this Ordinance shall be charged in respect of the various matters to which they relate: Provided that the Court may, for good cause shown, dispense with the payment of any particular fee or fees or any part thereof, on such terms as it may think fit.

Imp. § 128.

Disposal of fees, etc., of Official Receiver. 87. All fees and commissions received by or payable to the Official Receiver on the appointment of a trustee other than himself or for acting as trustee, and any remuneration received by the Official Receiver as an interim receiver or otherwise, shall be paid by such officer forthwith into the Colonial Treasury.

Schedules.

The First Schedule.

(This Schedule contains forms for legal proceedings, notices, and statements.)

The Second Schedule.

(This Schedule contains the scale of fees payable under §§ 63 and 86.)

b) No. 6 of 1902. An Ordinance to further amend The Bankruptcy Ordinance, 1891 (15th March, 1902).

Short title. 1. This Ordinance may be cited as *The Bankruptcy Amendment Ordinance, 1902*.

Construction. 2. This Ordinance shall be read and construed as one with the *Bankruptcy Ordinance, 1891*, as amended by Ordinances No. 6 of 1892, No. 24 of 1895 and No. 2 of 1901, hereinafter called the principal Ordinance.

Meaning of the word "debtor" in section 3 of Ordinance No. 7 of 1891. 3. The word "debtor" in section 4 of the principal Ordinance shall be deemed to include: a) A person who is domiciled in the Colony; b) A person who within a year before the date of the presentation of the petition has ordinarily resided or had a dwelling house or place of business in the Colony; c) A person who, though not himself personally within the Colony, carries on business by an agent within the Colony and possesses assets therein. In the case of a person who is not a British subject, the meaning of the word "debtor" is not confined to a person who is personally present in the Colony when he commits the act which, by the principal Ordinance, is made, an act of bankruptcy.

See also Ord. No. 7 of 1891, § 5. Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a feme sole. — Ord. No. 5 of 1906, § 5. "Ord. No. 6 of 1902 introduces into § 3 a definition of 'debtor'. This includes, in the first place, two definitions which were already in § 5 (1) (d) as conditions preliminary to the presentation of a bankruptcy petition: that the debtor should be domiciled in the Colony; or within a year prior to its presentation have ordinarily resided in the Colony; or had a dwelling house or place of business in the Colony. The clause in § 5 was not repealed; there were, therefore, two redundant provisions in the law and I am not sure that this may not in itself cause some confusion. Then comes clause (c) which introduces this further definition: 'a person who, though not himself personally within the Colony, carries on business by an agent within the Colony, and possesses assets therein.' These clauses are qualified by the further provision, that in the case of a person who is not a British subject, the word 'debtor' is not confined to a person who is personally present in the Colony, when he commits an act of bankruptcy." Per Piggott, C. J., in *In re Chan Yue Shan*, *Ex parte Chan King Po*, (1908), 4 H. K. L. R. 128.

II. Weihaiwei.

Introduction.

The territory of Weihaiwei embraces the island of Liu Kung, all the islands in the Bay of Weihaiwei, and a belt of land ten English miles wide along the entire coast line of the Bay of Weihaiwei as has been or may hereafter be delimited, including the territorial waters of the said islands and coast¹).

History and government.

Weihaiwei was leased by China to Great Britain under the treaty of 1st July, 1898, for such period as Port Arthur should remain in the occupation of Russia. Within the leased territory Great Britain was authorized to exercise sole jurisdiction²).

The government is administered by a Commissioner appointed by the Crown. The Commissioner is authorized to make and proclaim ordinances for the peace, order, and good government of the territory. The laws and ordinances of Hongkong may be applied with such modification as circumstances may require³). Natives

¹) Weihaiwei Order in Council, 1901, as amended by the Weihaiwei Order in Council, 12th March, 1903 (Stat. R. & O. Rev. 1904, Vol. 5, "Foreign jurisdiction," p. 283, § 1). —

²) Hertslet, *Commercial Treaties*, Vol. 21, p. 295. — ³) Weihaiwei Order in Council, 1901, § 9.

within the walled city of Weihaiwei continue under the jurisdiction of Chinese officials, except where the exercise of such jurisdiction is inconsistent with the military and naval requirements, or the peace, order, and good government of the territory¹).

Law in force.

The law of England as modified by local enactments is in force. In civil cases between natives the courts are authorized to apply Chinese or other native law and custom, except where such law or custom is repugnant to justice and morality²). When a native is a party to a case the court may try it with the assistance with two native assessors³).

Courts and procedure.

The judicial system comprises the High Court of Weihaiwei and magistrates courts⁴). The High Court is composed of a commissioner or judge, or both, is a court of record vested with all jurisdiction, criminal and civil, over all persons and in all cases respectively being and arising within the territory⁵). The High Court has the bankruptcy jurisdiction of the High Court of England⁶), admiralty jurisdiction under the Colonial Courts of Admiralty Act⁷), and jurisdiction in probate and administration, lunacy, matrimonial causes (except for dissolution, nullity, and jactitation of marriage), and jurisdiction over native marriages⁸).

An appeal lies from the High Court to the Supreme Court of Hongkong, where the amount involved is \$ 500 or upwards, the appellant furnishing security, not exceeding \$ 2000, for the prosecution of the appeal and the payment of the costs. The High Court may in any civil case give leave to appeal on the conditions named. The Supreme Court may give leave to appeal on such terms as it thinks fit⁹). An appeal must ordinarily be brought within three months from the date of the decision of the High Court¹⁰). An appeal lies from the Supreme Court of Hongkong to the Privy Council on the same conditions as other appeals from that court¹¹).

Statutes.¹²

Public and Bank Holidays.

No. 6 of 1903. An Ordinance to provide for Public and Bank Holidays (3d October, 1903).¹³

Short title. 1. This Ordinance may be cited as the *Holidays Ordinance, 1903*.
Imp. § 7.

Certain days to be public holidays. 2. The several days mentioned in Schedule A to this Ordinance annexed (hereinafter referred to as public holidays) shall, in addition to Sundays, be dies non, and shall be kept (except as hereinafter provided) as holidays in this Dependency.
Imp. § 1.

Regulations. 3. The Commissioner may, from time to time, make regulations excluding in whole or in part from the operation of this Ordinance any public office or any department thereof, and thereupon all acts and things relating to such public office or department thereof may be done and performed on any public holiday notwithstanding the provisions of this Ordinance.
Imp. § 5.

Certain days to be bank holidays. Bills of exchange falling due on bank holidays to be payable next day. 4. The several days mentioned in the Schedule B to this

¹) Ibid. § 11. — ²) Ibid. § 19. — ³) Ibid. § 20. — ⁴) Ibid. §§ 12, 14. — ⁵) Ibid. § 16. — ⁶) Ibid. § 63. — ⁷) 53 & 54 Vic. c. 27, § 2 (2—4), § 5, § 6, § 16 (3) apply as if the High Court were a Colonial Court of Admiralty. — Weihaiwei Order in Council, 1901, § 64. — ⁸) Weihaiwei Order in Council, 1901, §§ 65—67. — ⁹) Ibid. § 68. — ¹⁰) Ibid. § 69. Further rules relating to appeal, §§ 70—80. — ¹¹) Ibid. § 80. See p. 9, *supra*. — ¹²) As in force 1st January, 1912. — ¹³) The references in the notes (Imp.) are to the *Imperial Bank Holidays Act, 1871*, (34 & 35 Vic. c. 17). See also the *Hongkong Ord. No. 5 of 1912, supra*.

Ordinance annexed shall be bank holidays, and shall be kept as holidays in all banks in this Dependency, and all bills of exchange, promissory notes, and other negotiable instruments due and payable on any such bank holiday, shall be payable on the next following day and not on such bank holiday.

Imp. § 1.

Protest falling to be made on bank holidays may be made on next day. 5. In case of non-acceptance or non-payment of any negotiable instrument, the same may be noted or protested on the next following day after a bank holiday, and any such noting or protest shall be as valid as if made on the previous day.

Imp. § 1.

Acts relating to bills of exchange not to be compellable to be done on bank holidays. 6. No person shall be compellable to make any payment, or to do any other act relating to a bill of exchange or other negotiable instrument on a public holiday, or on a bank holiday, and the obligation to make such payment, or to do such other act, shall apply to the day next following such public holiday, or bank holiday, and the making of such payment, or doing such acts on such following day shall be equivalent to payment of the money, or performance of the act on the public holiday or bank holiday.

Imp. § 2.

Commissioner may appoint special days to be observed as public holidays. 7. It shall be lawful for the Commissioner, by notification, at any time to appoint a special day to be observed as a public holiday, or as a bank holiday, in addition to or in substitution for any of the days mentioned in the Schedules to this Ordinance annexed, and thereupon the provisions of this Ordinance shall be applicable to such day in the same manner as if the said day had been mentioned in Schedule A or Schedule B to this Ordinance annexed.

Imp. § 4.

Interpretation clause. 8. For the purposes of this Ordinance, the day next following a public holiday shall mean the next following day, not being itself a public holiday and the day next following a bank holiday shall be construed to mean the next following day not being itself a public or a bank holiday.

Imp. § 1.

Schedules.

Schedule A.

The first day of January.

Good Friday.

The 24th day of May, to be hereafter known as "Victoria Day."

The Birthday of His Majesty, or the day on which His Majesty's Birthday is ordered to be kept.

Christmas Day.

The 26th day of December.

If any of these days fall on a Sunday, the next following Monday shall be a public holiday.

Schedule B.

Chinese New Year's Day.

The first Monday in August.

Easter-Monday.

Whit-Monday.

Cyprus.

Introduction.

History and government.¹⁾

Of Cyprus it has been well said that "there is no country in the world whose fortunes have reflected more faithfully the ebb and flow of races. It has been the meeting place of Aryan and Semitic races, of West and East, of Egypt and Asia, of Catholic and Orthodox, of Christian and Moslem²⁾." Cyprus is probably the Chittim of the book of Genesis³⁾. In the island were established some of the earliest settlements of the Phoenicians and Greeks⁴⁾.

After being successively under the dominion of Egypt, Assyria, and Persia, Cyprus enjoyed during the fifth century B. C. a brief period of independence. When the empire of Alexander was divided Cyprus came under the dominion of the Ptolemies. In 57 B. C. Cyprus became a part of the Roman Empire, and upon the partition of the Empire it passed into the hands of the Byzantine emperors. Occupied by the Arabs in 646 and 802, it was finally reconquered by the Byzantine rulers. In 1191 it was taken by Richard Cœur de Lion and sold by him to the Knights Templar. But the Templars soon tired of their bargain, and Richard bestowed the island on Guy de Lusignan (1192), whose dynasty ruled in Cyprus, with the exception of the town of Famagusta, which was in the hands of the Genoese, until 1488, when the reigning queen abdicated the throne in favor of the Republic of Venice⁵⁾.

In 1570 Cyprus came under the dominion of the Turks, and with the exception of a short period (1832—1840) when the island was attached to Egypt, it remained under Turkish control until 1878. By the Anglo-Turkish Convention of 4th June, 1878⁶⁾, the Sultan assigned the island to be occupied and administered by the British Government. This Convention was explained by an Annex of 1st July, 1878⁷⁾, and modified by the Agreement of 3d February, 1879⁸⁾. Under the Convention of 14th August, 1879⁹⁾, the full power of making laws for the island was vested in the British Government. Under these conventions Cyprus belongs in theory to Turkey, but the British Government exercises within it all of the rights of sovereignty¹⁰⁾.

The present government of Cyprus is regulated by the Order in Council of 14th September, 1878,¹¹⁾ as modified by the Order in Council of 6th July, 1907¹²⁾.

¹⁾ In addition to the works cited in this section, see de Mas Latrie, *L'histoire de l'île de Chypre*; Lang, *Cyprus: its history*; Löher, *Cyprus: historical and descriptive*; Herre, *Europäische Politik im cyprischen Krieg*; Berard, *Cypris: chronique de l'île de Chypre*; Cobham, *Excerpta Cypria*; Cobham, *Bibliography of Cyprus*. For an interesting account of the history of Cyprus law, see Twiss, *Cyprus: its mediæval jurisprudence and modern legislation* (in *Law Magazine and Review*, 4th Ser., Vol. 5, p. 525). — ²⁾ Lucas, *Historical geography of the British colonies*, Vol. 1, p. 31. — ³⁾ Genesis, X. 4. — ⁴⁾ Cyprus is referred to in Iliad, XI. 19, Odyssey, IV. 3., XVIII. 442. — ⁵⁾ Lucas, l. c., pp. 31—39. — ⁶⁾ Hertslet, *Treaties*, Vol. 14, p. 1170. — ⁷⁾ Ibid. p. 1171. — ⁸⁾ Hertslet, *State Papers*, Vol. 70, p. 306. — ⁹⁾ Hertslet, *Treaties*, Vol. 14, p. 1177. — ¹⁰⁾ As to the effect to the Convention of 1878 on the law in force in Cyprus, see *Law in Cyprus*, (in *Law Magazine and Review*, 4th Ser., Vol. 4, p. 15); *Cyprus and the Capitulations*, (in *Law Magazine and Review*, 4th Ser., Vol. 4, p. 131). Westlake thinks that there has been a real dismemberment of the sovereignty of Cyprus. — *International Law*, Pt. I., *Peace*, p. 138. — Cp. Oppenheim, *International Law*, Vol. I., p. 221. As to some of the difficulties that may arise owing to the existence of such double or ambiguous sovereignty, see Hall, *International Law* (5th ed.), p. 510. Natives of Cyprus are not considered to be protected members of the British Crown in countries foreign to the Ottoman Empire, or even in Egypt, and still less therefore in the Ottoman dominions. — Hall, *Foreign Jurisdiction of the British Crown*, p. 226, n. As to the rights of Great Britain under the Convention, see Martens, *Traité de droit international*, Vol. 1., p. 476, et seq., Westlake, *International Law*, Pt. I., *Peace*, p. 138, n. — ¹¹⁾ Stat. R. & O. Rev. 1904, Vol. 5, "Foreign Jurisdiction," p. 304. — ¹²⁾ Stat. R. & O. 1907, p. 192.

The executive power is vested in a High Commissioner and Commander-in-Chief¹⁾, assisted by an executive council²⁾. The legislative power is vested in a legislative council, consisting of the High Commissioner and eighteen members, twelve elective and six non-elective³⁾. Of the twelve elective members three are elected by the Mohammedan and nine by the non-Mohammedan voters⁴⁾. The legislative council is empowered to make such laws as may from time to time be necessary for the peace, order, and good government of the island. The power to disallow local enactments and to legislate by means of Orders in Council is expressly reserved⁵⁾.

Law in force.

Two systems of law are in force in Cyprus. In all actions where the defendant or all the defendants are Ottoman subjects, the Ottoman law as in force in Cyprus on 13th July, 1878, except as modified by subsequent enactments of Cyprus, is applied⁶⁾. The principal provisions relating to Ottoman commercial law are contained in the Commercial Code, the Maritime Code⁷⁾, and the Medjellé⁸⁾.

In all actions where the defendant or any defendant is not an Ottoman subject the common law and the rules of equity and the statutes of general application which were in force in England on 21st December, 1878, as modified by subsequent enactments of Cyprus, are applicable⁹⁾.

Where, in civil cases, the parties have expressly or by implication agreed that their respective rights are to be governed by either Ottoman or English law, as modified by local enactments, the courts will apply the system of law so adopted¹⁰⁾. The Ottoman law applies, regardless of the nationality of the defendant, in all cases where, being in force in Cyprus, it expressly enacts that every person shall be bound by its provisions. Ottoman law, as modified by local enactments, governs in all actions relating to immoveable property¹¹⁾.

No person is barred from succeeding to any property by reason of his being of a different nationality from that of the person from whom the succession is derived¹²⁾. There are local enactments relating to interest¹³⁾, and merchandise marks¹⁴⁾.

¹⁾ Ibid. § 10. — ²⁾ Ibid. § 10. — ³⁾ Ibid. § 11. — ⁴⁾ Ibid. § 15. — ⁵⁾ Ibid. § 12. — ⁶⁾ Order in Council, 30th November, 1882, §§ 3, 23. — ⁷⁾ The Ottoman Commercial Code and the Ottoman Maritime Code are substantially translations of the French Code de commerce. The text of these codes will be found in Padel, *Commercial Law of Turkey*, in Vol. 34 of this Work, in the Destur, Vol. 1, pp. 375, et seq., in Aristarchi, *Législation ottomane*, Vol. I., pp. 276, et seq., and in Young, *Corps de droit ottoman*, Vol. 7, pp. 55, et seq. It is to be noted that only those laws of the Ottoman Empire that were in force in Cyprus on 13th July, 1878, are adopted. — ⁸⁾ The Medjellé (Civil Code) contains provisions relating to sale (arts. 101—403), hire (arts. 404—611), security (arts. 612—672), transfer of debts (arts. 673—700), pledge (arts. 701—761), deposit and loan for use (arts. 762—832), gifts (arts. 833—880), wrongful appropriation of property and other delicts (arts. 881—940), interdiction, effect of duress, right of pre-emption in sales (arts. 941—1044), co-ownership and partnership (arts. 1045—1448), agency and mandates (arts. 1449—1530), compromises, releases, and procedure (arts. 1531—1571), procedure, evidence, prescription, etc. (arts. 1572—1851). Articles 1613—1851 are not in use in Cyprus. — Grigsby, *Cyprus law and its administration* (in *Law Quarterly Review*, Vol. 12, pp. 67—75). The text of the Medjellé may be found in the Destur, Vol. I., pp. 20, et seq., in Aristarchi, *Législation ottomane*, App., and in Young, *Corps de droit ottoman*, Vol. 6, pp. 169, et seq. There are English translations of the Medjellé by Grigsby (1895), and Tyser (1901). — ⁹⁾ Order in Council, 30th November, 1882, §§ 3, 24. — ¹⁰⁾ Order in Council, 30th November, 1882, § 25. — ¹¹⁾ Ibid. § 25. — ¹²⁾ Law No. 20 of 1895, § 12. This law does not apply to the property of deceased Mohammedans. — Ibid. § 63. — ¹³⁾ The interest recoverable by Law on all debts and obligations shall be computed at the rate of 9 per cent. per annum, except when it is otherwise provided by express contract between the parties. This Law shall not apply to debts or obligations contracted before the passing thereof, and nothing herein contained shall be deemed to give validity to any contract whereby a higher rate of interest is receivable in respect of any debt or obligation that might legally have been received if this Law had not been passed. — Law No. 7 of 1882, §§ 1, 2. — ¹⁴⁾ Law No. 12 of 1892. On the sale or in the contract of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark, and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Law, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee. Where, at the passing of this Law, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Law with respect to false

Courts and procedure.

The judicial system comprises a Supreme Court, District Courts, Assize Courts, Magisterial Courts, and Courts of Village Judges, and special tribunals having jurisdiction in respect of religious questions relating to the Moslem faith.

The Supreme Court consists of a Chief Justice and a Puisne Judge¹). The Supreme Court is a court of appeal from the District Courts²), and a Colonial Court of Admiralty, within the Colonial Courts of Admiralty Act, 1890³).

In each of the cazas, or administrative divisions of Cyprus, there is established a District Court, composed of three judges, of whom one is designated the President, and the two others as ordinary judges. Of the ordinary judges of each District Court one must be a Christian, the other a Moslem⁴). Every Puisne Judge of the Supreme Court has, in any district in which he is directed to act by the High Commissioner, the jurisdiction of the President of the District Court of such district. Every President of a District Court has, in any district in which he is directed to act by the High Commissioner, the jurisdiction of the President of the District Court of such district. Every ordinary judge of a District Court has, in any district in which he is directed to act by the High Commissioner, the jurisdiction of an ordinary judge of such district⁵).

In addition to appellate jurisdiction from the Village Judges, the District Courts have original jurisdiction in all Ottoman actions, except such Ottoman actions as are within the jurisdiction of a Village Judge, or as are in the exclusive jurisdiction of the religious courts⁶), and jurisdiction in actions for the partition of immoveable property, except where no question of title is involved⁷). The President of the District Court sitting alone has jurisdiction to hear and determine all foreign actions. But on the application of any party to any such action, and with the consent of all other parties thereto, such action shall be heard and determined by the full District Court⁸). The decision of a District Court in any action where the amount involved is less than £20 is final, except where leave to appeal is given by the court rendering the decision, or by the Supreme Court. In all other actions an appeal lies to the Supreme Court⁹).

Assize Courts are established in each caza. They are composed of one or more judges of the Supreme Court, and either the President or two or more ordinary judges of the District Court of the district. The Assize Courts exercise criminal jurisdiction¹⁰). Magisterial Courts are also established in each caza, and are composed of the President of the District Court sitting alone, or the two ordinary judges of such District Court sitting together¹¹).

The courts of the Village Judges are presided over by the President or an ordinary judge of the District Court, or by persons appointed to act as Village Judges¹²), or by the Village Judge of another jurisdiction, directed by the High Commissioner to act as Village Judge in a locality outside of his jurisdiction¹³).

Village Judges have jurisdiction in all Ottoman actions, and with the consent of all parties thereto, of foreign actions, where the amount involved does not exceed £5, and the defendant or one of the defendants resides within the jurisdiction.

trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or country and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there. — Ibid. §§ 14, 15.

¹) Cyprus Courts of Justice Order, 1882, Stat. R. & O. Rev. 1904, Vol. 5, "Foreign Jurisdiction," p. 341, § 4. Additional Puisne Judges may be appointed. — ²) Ibid. § 32. — ³) 53 & 54 Vic. c. 27. — Order in Council, 23d November, 1893, Stat. R. & O. Rev. 1904, Vol. 5, "Foreign Jurisdiction," p. 416. See *The Invermay v. Batista*, (1895), 3 Cyp. L. R. 80. — ⁴) Cyprus Courts of Justice Order, 1882, § 5. Additional District Courts with concurrent jurisdiction may be authorized by the High Commissioner. — ⁵) Order in Council, 11th August, 1902, Stat. R. & O. Rev. 1904, Vol. 5, "Foreign Jurisdiction," p. 420, § 4. — ⁶) Cyprus Courts of Justice Order, 1882, § 29. An Ottoman action is an action where the defendant or all the defendants are Ottomans. — Ibid. § 3. — ⁷) Law No. 1 of 1897, § 2. — ⁸) Cyprus Courts of Justice Order, 1882, § 30. A foreign action is one in which the defendant or any defendant is not an Ottoman subject. — Ibid. § 3. — ⁹) Ibid. § 31. — ¹⁰) Ibid. § 6. — ¹¹) Ibid. § 7. — ¹²) Ibid. § 10. — ¹³) Order in Council, 11th August, 1902, § 4.

These courts also have jurisdiction in certain cases involving the right of any person to immovable property within the jurisdiction. By order of the High Commissioner the jurisdiction of the Village Judge of any place may be so extended as to confer power to hear and determine all Ottoman actions where the amount involved does not exceed £10. An appeal from the Village Judge lies to the full District Court¹).

The High Commissioner is empowered to establish and maintain religious tribunals, and to define the local jurisdiction of such tribunals²). The judgments of the religious tribunals (Sheri Courts) may, on the application of any person in whose favour such judgment is made, be executed by an order issuing out of a District Court, and such District Court may stay execution on the judgment of a religious tribunal in the same manner as it may stay execution of its own judgment³).

The procedure in the courts is regulated by Orders in Council⁴) and by the Civil Procedure Law, 1885⁵).

An appeal lies to the Privy Council from any final judgment, decree, order, or sentence of the Supreme Court in respect of any sum or matter at issue of the amount or value of not less than £500, or involving directly or indirectly any claim, demand, or question to or respecting property, or any civil right amounting to or of the value of not less than £300. Leave to appeal must be asked within thirty days. Pending appeal, the judgment may be carried out or suspended, the respondent or appellant giving security. The amount of appellant's security is regulated by the court below, and may not exceed £500. Security must be furnished within three months⁶).

Bibliography.⁷⁾

Collections of Laws.

Hutchinson, Sir Joseph Turner, and **Fisher**, Stanley: Statute law of Cyprus. 1878 to 1906. London, 1906.

Seager, M. B.: Index to ordinances and laws. Nicosia. 1897.

Sessional laws. Annual. Nicosia.

Reports of Cases.

| Name of report. | No. of vols. | Period. | Method of citation |
|--------------------|--------------|-----------|--------------------|
| Cyprus Law Reports | 9 | 1883—1909 | Cyp. L. R. |

Statutes.⁸⁾

Application of Law.

Order in Council. Cyprus Courts of Justice Order, 1882 (30th November, 1882).⁹⁾

Application of Ottoman law.

23. Every Court and Judge exercising civil jurisdiction in an Ottoman action, or exercising criminal jurisdiction where an Ottoman subject is accused, shall apply Ottoman law, as from time to time altered or modified by Cyprus statute law.

1) Order in Council, 4th July, 1908, Stat. R. & O. 1908, p. 389. — 2) Law No. 4 of 1883. As to the jurisdiction of the Archbishop of Cyprus in matrimonial causes regarding person belonging to the Orthodox Eastern Church, see *Journal of Society of Comparative Legislation*, (N. S.) Vol. 2, p. 87. Cp. *Parapano v. Happaz*, (1904) A. C. 165. — 3) Law No. 10 of 1885, § 95. — 4) Cyprus Courts of Justice Order, 1882, as amended by Cyprus Courts of Justice Amendment Order, 1902. — 5) Law No. 10 of 1885. — 6) Order in Council, 10th August, 1909, Stat. R. & O. 1909, p. 353. See also Order in Council, 31st May, 1910. — 7) For works on Turkish law, see bibliography in Padel's *Commercial Law of Turkey*, in this Work. — 8) As in force 1st January, 1912. — 9) This Order may be cited as *The Cyprus Courts of Justice Order, 1882*. It was amended by The Cyprus Courts of Justice Amendment Order, 1902 (11th August, 1902). These Orders may be found in the Stat. R. & O. Rev. 1904, Vol. 5, "Foreign Jurisdiction," pp. 341, 420.

An Ottoman action is an action where the defendant or all defendants are Ottomans. Ottoman law is the law which was in force in Cyprus on 13th July, 1878. Cyprus statute law means all the laws in force in Cyprus by virtue of any Order in Council or by virtue of any enactment of the High Commissioner, with or without the advice of the Legislative Council. — Cyprus Courts of Justice Order, 1882, § 3. All laws enacted prior to 13th July, 1878, contained in the Destur, are in force in Cyprus, unless the contrary is shown. — Koukoulli v. Hamid Bey, (1907), 7 Cyp. L. R. 85. The authority of the Hedaya is sustained in Louka v. Nicola, (1901), 5 Cyp. L. R. 82. The great body of the law relating to commercial transactions is contained in the Ottoman Commercial Code and in the Medjellé or Civil Code. As to the authority of decisions of the French courts, interpreting provisions of the portions of the Code de commerce, adopted in the Ottoman Commercial Code, see Imperial Ottoman Bank v. Mavromoustachi & Sons, (1893), 2 Cyp. L. R. 181. Where the Ottoman Commercial Code obviously intends to adopt a provision of the French Code de commerce, but the language employed by the Turkish legislator is susceptible of two constructions, and one of those constructions can be harmonized with the scheme of the French Code, while the other is out of harmony with that scheme, the former of these constructions is to be preferred. — In re Talliadorou, (1907), 7 Cyp. L. R. 97.

In the interpretation of the provisions of the Ottoman Commercial Code¹) it has been held under:

Art. 1. The question whether a person is a trader is a question of fact in all cases. A carpenter and wood carver may be a trader. — In re Talliadorou, (1907), 7 Cyp. L. R. 97. And so may a shoemaker making twenty five to thirty pairs of boots per week, which he disposes of at fairs and elsewhere. — In re Nicolaou, (1906), 7 Cyp. L. R. 32. But not a monastic body. — Beshbesh v. Apostolides, (1883), 1 Cyp. L. R. 1. Where a person is engaged in buying and selling goods he may be a trader, although he has no fixed place of business and keeps no books. — Joachim v. Francis, (1892), 2 Cyp. L. R. 81. Held, not a trader. — In re Hadji Fehmi Hassan, (1892), 2 Cyp. L. R. 84, (distinguished in In re Talliadorou, (1907), 7 Cyp. L. R. 97.)

Art. 118. The institution of a suit on a demand bill or note is a sufficient demand, but the Court may decline to award costs to the plaintiff. — Ioannou v. Hassan, (1894), 3 Cyp. L. R. 30.

Art. 120. Where the holder failed to protest for non-payment until twenty-seven days after a bill became due, and it was shown at the time the bill became due the acceptor had not been declared bankrupt, and was indebted to the drawer in an amount greater than the amount of the bill, the holder lost his recourse against his indorsers and against the drawer. — Imperial Ottoman Bank v. Mavromoustachi & Sons, (1893), 2 Cyp. L. R. 181.

Art. 145. An instrument in the ordinary form of a promissory note may be an acknowledgment of a debt within Medjellé, art. 1610, without the power of denying the validity or amount of the debt. — Sotiri v. Sotiri, (1893), 2 Cyp. L. R. 177. A stipulation for interest does not destroy the negotiable character of an instrument. — Chakill & Iakovides v. Philakti, (1889), 1 Cyp. L. R. 64. But the provision for the payment of attorney's fees and costs of suit destroys the negotiable character of an instrument under this article. — Roussos v. Theophanides, (1896), 4 Cyp. L. R. 12. A bond providing for the payment of a sum of money, and containing a further agreement to mortgage certain property and to pay costs of suit, is not a promissory note. — Imperial Ottoman Bank v. Limbouri, (1897), 4 Cyp. L. R. 48.

Art. 146. If a bill of exchange or promissory note has been given in the course of trade, it is subject to the limitation of five years provided for in this article, even though it was accepted or made by a person who is not a trader or banker. — Joachim v. Francis, (1892), 2 Cyp. L. R. 81.

Art. 147. The cessation of payments herein referred to means a cessation under circumstances showing an insolvent condition. — In re Shira, (1907), 7 Cyp. L. R. 91. The payments must be of a commercial character. — In re Talliadorou, (1907), 7 Cyp. L. R. 97. Facts held insufficient to show insolvency. — In re Shira, (1907), 7 Cyp. L. R. 91.

Art. 150. As to the meaning of "executed provisionally," see In re Shira, (1907), 7 Cyp. L. R. 91.

Art. 210. Where the bankruptcy was fraudulent, the debtor may be sued on the debt without proving the debt before the syndics. — Economou v. Constanti, (1894), 3 Cyp. L. R. 29.

Art. 250. As to proof of debt by the administrator of the bankrupt estate of an accommodation acceptor against the bankrupt estate of the drawer, see In re Georgiades, (1896), 4 Cyp. L. R. 1.

In the interpretation of the provisions of the Medjellé²), it has been held under:

Art. 673. A bond providing for the payment of a sum of money, and a further agreement to mortgage certain property and to pay costs of suit, is not a havalé. — Imperial Ottoman Bank v. Limbouri, (1897), 4 Cyp. L. R. 48.

¹) For the provisions of this Code, see Padel, *The Commercial Law of Turkey*, in Vol. 34 of this Work. The text is also reproduced in the Destur, Vol. 1., pp. 357, et seq., in Aristarchi, *Législation ottomane*, Vol. 1., pp. 276, et seq., and in Young, *Corps de droit ottoman*, Vol. 7, pp. 55, et seq. — ²) The text of the Medjellé is reproduced in the Destur, Vol. 1., pp. 20, et seq., in Aristarchi, *Législation ottomane*, App., and in Young, *Corps de droit ottoman*, Vol. 6, pp. 169, et seq. Translations of the Medjellé by Grigsby (1895) and Tyser (1901) have been published.

Art. 1485. As to ratification of the acts of an agent, see *Charilaos Ioannides v. Charalampes Haji Georgiou*, (1907), 7 Cyp. L. R. 102.

Art. 1610. The acknowledgment of the debt may be by an instrument in the ordinary form of a promissory note. — *Sotiri v. Sotiri*, (1893), 2 Cyp. L. R. 177.

The Infants Estate Law of 1884 (now repealed, see Law No. 7 of 1894) was not intended to modify the Ottoman law regarding the age at which persons obtained capacity to contract. — *Paspari v. Panayioti*, (1893), 2 Cyp. L. R. 130. A judgment creditor of a person who is a member of a partnership may have the interest of his debtor in the partnership sold to satisfy his claim. — *Katouroforti v. Kalouta*, (1895), 3 Cyp. L. R. 233. A joint debtor or co-surety claiming contribution must show that the defendant is bound to contribute, and that the claimant has paid an amount in excess of that which he was himself liable to pay. — *Georghiou v. Georghiou*, (1902), 6 Cyp. L. R. 18. See further as to the nature of a caution solidaire, *Taliadoros v. Heirs of Lampe*, (1901), 5 Cyp. L. R. 63. A provision in a contract entered into abroad ousting the courts of Cyprus of the jurisdiction vested in them, and stipulating that actions shall be brought only in a particular foreign court, will not be enforced. — *Nivogosiau v. Phocéenne Steamship Co.*, (1907), 7 Cyp. L. R. 51.

Application of English law.

24. Every court and judge exercising civil jurisdiction in a foreign action, or exercising criminal jurisdiction where a person, not being an Ottoman subject, is accused, shall apply English law, as from time to time altered or modified by Cyprus statute law.

A foreign action is one in which the defendant, or any defendant is not an Ottoman subject. English law means the common law, the rules of equity, and the statutes of general application which were in force in England on the 21st December, 1878. — *Cyprus Courts of Justice Order*, 1882, § 3. As to meaning of Cyprus statute law, see note to preceding section.

Exceptions.

25. The two last foregoing clauses shall be subject to the following provisions, viz: Where in any action the parties shall agree that their respective rights are to be determined by English or by Ottoman law, as respectively altered or modified as aforesaid, the Court shall in the solution of the question at issue apply the law so agreed on. Where in any action it shall appear to the Court that the transactions on which the action is based were so conducted as to evidence the intention of all parties thereto that their rights in relation to such transactions should be regulated by Ottoman law or by English law, as respectively modified as aforesaid, the Court shall in the solution of the question at issue apply the law by which the parties so intended their rights to be regulated without regard to the nationality of the defendant or defendants. Where by any Ottoman law in force in Cyprus on the 13th day of July, 1878, it is expressly enacted that every person whether of Ottoman nationality or not, shall be subject to the provisions thereof, no person shall be exempt from the provisions of any such law by reason of his not being an Ottoman subject. In all actions relating to immoveable property, the rights of the parties shall be regulated by Ottoman law, as modified or altered by Cyprus statute law.

Where the parties expressly agree to be bound by the provisions either of the English or of the Ottoman law, no question arises. But difficult questions may arise where the intention of the parties must be ascertained from the circumstances of the transaction. As to the indicia of intention to adopt the provisions of a particular system of laws in the analogous cases arising under private international law, see *Dicey, Conflict of laws* (2d edition) pp. 560—568; *Foote, Private international jurisprudence* (3d edition) pp. 390—433; *Westlake, Private international law*, (5th edition) pp. 294—310; *Wharton, Conflict of laws*, (3d edition) §§ 427d, 427n, 427o, 426p, 429, 471b.

Procedure.

26. Subject to the other provisions of this Order, the civil jurisdiction of every Court and judge exercising civil jurisdiction in an Ottoman action, or exercising criminal jurisdiction where an Ottoman subject is accused, shall, as far as circumstances admit, be exercised with the powers vested in and according to the course of procedure and practice observed by the Nizam Courts as established in Cyprus before the coming into operation of this Order; and the civil and criminal jurisdiction of every Court and judge exercising civil jurisdiction in a foreign action, or exercising criminal jurisdiction where the accused is not an Ottoman subject, shall, so far as circumstances admit, be exercised with the powers vested in and according to the course of procedure and practice observed by the Queen's High Court of Justice for Cyprus at the time of the coming into operation of this Order.

Power to apply law and procedure with modifications.

27. For the purpose of facilitating the application of the statute law of England, and the exercising of the powers hereinbefore mentioned, the Court or judge may construe any enactment with such verbal alterations not affecting the substance as may be necessary and proper to adapt the same to the matter before the Court; and every judge or officer of any Court having or exercising functions of the like kind with or analogous to the functions of any judge or officer referred to in any enactment shall be deemed to be within the enactment; and when the Great Seal or any other seal is mentioned in any enactment the same shall be read as if the seal of the Supreme Court or any other Court, as occasion may require, were therein mentioned; and in matters of procedure documents may be written or printed on ordinary paper in the ordinary way, notwithstanding any direction in any enactment respecting writing, printing, or engrossing on vellum, parchment, or otherwise.

Bills of Exchange.¹⁾**No. 5 of 1886. To make better Provisions for the Protesting of Bills of Exchange and for the Making of other Protests (24th April, 1886).**

Protests of bills of exchange and other documents. 1. Bills of exchange and other documents securing the payment of money for the protesting of which provision is made by the Ottoman Commercial Code shall be protested in the manner hereinafter prescribed; that is to say: A true and exact copy of the bill of exchange or other document to be protested, and of all inscriptions and endorsements thereon at the time of the making of the protest, together with a written statement at the foot of the copy setting forth that the bill of exchange or other document is protested, and the grounds of the protest, which copy and statement is hereinafter referred to as "the document of protest," shall be presented to the Registrar of the District Court of the district within which the bill of exchange or other document is by law required to be protested. The forms in the Schedule may be used for making protests under this section, with such variations as the circumstances of the case may require.

Other protests. 2. Any protest other than those hereinbefore particularly mentioned which has been heretofore required to be made before the Commercial Court or any officer thereof, or before any court or any officer of any court to which the powers and duties of the Commercial Court in that behalf have been transferred, may be made by presentation to the Registrar of a document of protest setting forth the acts, omissions, facts, circumstances, or things on account of which the protest is made, and the fact that it is made.

Recording of protest. 3. The Registrar on presentation to him of any document of protest shall note thereon the day on which it was presented to him and affix his signature to the note, and shall preserve the document of protest as a record of the Court.

Service of protest. 4. Where any document of protest is required to be served on any person, service on him of a copy certified under the hand of the Registrar and the seal of the Court to be a true copy of the document shall be good service of the original document.

Proof of service. 5. Service of a document of protest may be effected and proved in any manner in which service of a writ of summons in an action may under the provisions of any rules of court for the time being in force be effected and proved.

Fees on protests. 6. Every document of protest shall bear a stamp or stamps of the value of three shillings, which stamp or stamps, may be of such denomination and either impressed or adhesive as the High Commissioner may from time to time direct; and in default of or until any such direction, adhesive revenue stamps shall be used for the purposes of this section. No document of protest shall be received by the Registrar unless it bears the prescribed stamp.

¹⁾ In Ottoman actions involving questions in the law of negotiable instruments not covered by this Law the provisions of the Ottoman Commercial Code, arts. 70—146, as modified by this Law (No. 5 of 1886) govern. For interpretation of some of its provisions, see note to Cyprus Courts of Justice Order, 1882, § 23, *supra*. In foreign actions the English law as it existed on 21st December 1878, except as modified by this Law, is applicable. Every cheque of whatsoever value is subject to a stamp duty of one piastre. — Law No. 2 of 1879, § 2.

Fees on copies, etc. 7. There shall be payable in respect of the issue of copies of documents of protest from any Court, and in respect of the certifying of copies to be true copies, such fees as are for the time being directed to be taken on the issue of copies of the file of proceedings in any action and on certifying copies of the file of proceedings to be true copies thereof; and every fee so taken shall be taken, applied, and disposed of in the same manner as though it were taken in respect of a copy of any such file of proceedings.

Short title. 8. This Law may be cited as the *Protests Law, 1886*.

Schedule.

Form of Protest for Non-Acceptance.

(Set out the document protested, with all inscriptions and endorsements thereon.)

The instrument whereof a copy is above set forth having been duly presented for acceptance to the said A. B., who is unable or has refused to sign his name in acceptance thereof, the said instrument is hereby protested.

Presented to me this day of 19..

Stamp.

3/—

(Signed)

Registrar of the
District Court of

Form of Protest where the Person liable to pay the Amount of the Bill is absent.

(Set out the document protested, with all inscriptions and endorsements thereon.)

The instrument whereof a copy is above set forth having been duly presented for payment and the said A. B., being absent, the said instrument is hereby protested.

Presented to me this day of 19..

Stamp.

3/—

(Signed)

Registrar of the
District Court of

Form of Protest for non-payment where person is liable to pay the amount of the Bill is present.

(Set out the document protested, with all inscriptions and endorsements thereon.)

The instrument whereof a copy is above set forth having been duly presented for payment and the said A. B., being present and having refused to pay the same on the ground that (*state reasons, if known*), the said instrument is hereby protested.

Presented to me this day of 19..

Stamp.

3/—

(Signed)

Registrar of the
District Court of

Bankruptcy.¹⁾

a) No. 1 of 1878. For the Establishment of a High Court of Justice (17th January, 1879).

Bankruptcy jurisdiction. 69. a) The Court shall be a Court of Bankruptcy, and as such shall, as far as circumstances admit, have all such jurisdiction as for

¹⁾ In Ottoman actions the provisions of the Ottoman Commercial Code, arts. 147—315 govern, except as modified by Laws No. 1 of 1878, No. 7 of 1886, and No. 14 of 1911. For interpretation of some of the provisions of this code, see note to Cyprus Courts of Justice Order, § 23, *supra*. In foreign actions the English law as it existed on 21st December, 1878, except as modified by this Law, is applicable.

the time being belongs to the Court of Bankruptcy and the County Courts in England, or to any other judicial authority having for the time being jurisdiction in bankruptcy in England. b) Proceedings in bankruptcy shall commence by writ of summons to the party to be made bankrupt to show cause why he should not be adjudicated bankrupt: or by a writ of summons issued by a debtor himself to his creditor or creditors to show cause why he (the debtor) should not be adjudicated bankrupt. c) On or at any time after the issue of such a writ, the Court may stay further proceedings in the Court in any action, execution, or other legal process, against the debtor, in respect of any debt provable in bankruptcy, or may allow such proceedings, whether pending at the commencement of the bankruptcy or begun during the continuance of the bankruptcy, to proceed, on such terms as the Court thinks fit. d) The Court may, on or at any time after the issue of such a writ, appoint a receiver or manager of the property or business of the debtor, or of any part thereof, and may direct immediate possession to be taken by an officer of the Court, or under the control of the Court, of that property or business, or of any part thereof.

"Court" means the Supreme Court.

b) No. 7 of 1886. To provide for the Setting aside of Transfers of Property made to hinder Creditors (24th April, 1886).

Definition. 1. In this Law, the expression "creditors of a debtor" means not only the persons to whom he is actually indebted, but also every sheriff, and every person acting for a sheriff, who shall lawfully put into execution any judgment given against the debtor, and also every person (if any) in whom the property of the debtor or the right to sell and dispose of it shall either by his own act or by operation of law become vested for the common benefit of all the persons to whom he is indebted; and the expression "judgment debt" means not only a debt for the payment of which a judgment has been given by a competent Court, but also every debt in respect of which the person to whom it is due has duly established his right to rank as a creditor of the person from whom it is due on the distribution of the property of the last-mentioned person under any law providing for the distribution of the property of bankrupts or insolvent persons among their creditors.

Avoidance of fraudulent transfers. 2. 1. Every gift, sale, pledge, mortgage, or other transfer or disposal of any moveable or immoveable property made by any person with intent to hinder or delay his creditors or any of them in recovering from him, his or their debts shall be deemed to be fraudulent, and shall be invalid as against such creditor or creditors; and, notwithstanding any such gift, sale, pledge, mortgage, or other transfer or disposal, the property purported to be transferred or otherwise dealt with may be seized and sold in satisfaction of any judgment debt due from the person making such gift, sale, pledge, mortgage, or other transfer or disposal. **2.** Every transfer or assignment of any property made otherwise than in exchange for money or other property of equivalent value shall be deemed to be fraudulent for the purposes of this Law if it is made to any parent, spouse, child, brother, or sister of the transferor or assignor. **3.** No sale, mortgage, transfer, or assignment made in exchange for money or other property of equivalent value shall be voidable under the provisions of this Law, unless the purchaser, mortgagee, transferee, or assignee shall be shown to have accepted it with knowledge that such sale, mortgage, transfer, or assignment was made by the vendor, mortgagor, transferor, or assignor with intent to delay or defraud his creditors.

Procedure to set aside transfer. 3. 1. Any gift, sale, pledge, mortgage, or other transfer or disposal of any moveable or immoveable property deemed to be fraudulent under the provisions of section 2 of this Law may be set aside by an order of a Court, to be obtained on the application of any judgment creditor made in the action or other proceeding wherein the right to recover the debt has been established, and to the Court before which such action or other proceeding has been heard or is pending. **2.** No gift, sale, mortgage, or other transfer of any property shall be set aside under the provisions of this Law, except it shall have been made within a period of one year next before the commencement of the action or proceeding in which the application to set it aside is made.

Registers of Land Registry Office to be rectified. 4. It shall be lawful for the proper officer of Land Registry on delivery to him of an office copy of any order made under the provisions of the last preceding section to make or cause to be made all such registrations in the books of the Land Registry Office as may be necessary consequent on the order.

Short title. 5. This Law may be cited as the *Fraudulent Transfers Avoidance Law, 1886*.

c) No. 14 of 1911. To amend certain Provisions of the Ottoman Law relating to Bankruptcy (June 26, 1911).

Short title. 1. This Law may be cited as the *Bankruptcy Law, 1911*.

Definitions. 2. In this Law the term "trustee" means and includes every trustee in bankruptcy, juge-commissaire, syndic, or person appointed by any Court of competent jurisdiction to administer in conformity with the provisions of the Ottoman Commercial Code the estate of any person who has been adjudged bankrupt under the said Code.

Prosecution of culpable bankrupts. 3. Any person may be convicted of culpable bankruptcy under the provisions of the Ottoman Commercial Code upon a complaint or charge made or preferred in the first instance by any creditor of such person or by the trustee.

Punishment of culpable bankrupts. 4. Whoever shall be convicted of culpable bankruptcy under the provisions of the Ottoman Commercial Code, shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour.

Punishment of fraudulent bankrupts. 5. Any person adjudged bankrupt under the provisions of the Ottoman Commercial Code, shall, in each of the cases following, be deemed guilty of an offence, and on conviction thereof, shall be liable to be imprisoned for any term not exceeding seven years, with or without hard labour, that is to say: 1. If he does not to the best of his knowledge and belief, fully and truly discover to the trustee all his property moveable and immoveable, and how and to whom and for what consideration and when he disposed of any part thereof, and what sums he has annually spent for his personal expenses and the ordinary expenses of his family, unless the Court is satisfied that he had no intent to defraud. 2. If he does not deliver up to the trustee, or as he may direct, all such part of his moveable and immoveable property as is in his custody or under his control, and which by law constitutes the assets divisible amongst his creditors, unless the Court is satisfied that he had no intent to defraud. 3. If he does not deliver up to the trustee, or as he may direct, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the Court is satisfied that he had no intent to defraud. 4. If, after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to conceal the state of his affairs or otherwise to defraud. 5. If, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to conceal the state of his affairs or otherwise to defraud. 6. If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to conceal the state of his affairs or otherwise to defraud. 7. If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission in any document affecting or relating to his property or affairs. 8. If he makes any material omission in any statement affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to defraud. 9. If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he conceals any part of his property or any debt due

to or from him, or disposes of any part of his goods or property for any consideration which is substantially less in value than the usual market value of such goods or property, unless the Court is satisfied that he had no intent to defraud. 10. If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently removes any part of his property. 11. If knowing or believing that a false debt has been claimed or proved by any person under the bankruptcy he fails for the period of one month from the date of such knowledge or belief to bring the matter to the notice of the trustee. 12. If, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors he attempts to account for any part of his property by fictitious losses or expenses. 13. If, within twelve months next before the presentation of a bankruptcy petition by or against him, he, by any false representation or other fraud, has obtained any property on credit and has not paid for same. 14. If, within twelve months next before the presentation of a bankruptcy petition by or against him, he obtains under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit and he has not paid for the same, unless the Court is satisfied that he had no intent to defraud. 15. If, within twelve months next before the presentation of a bankruptcy petition by or against him, he pawns, pledges, mortgages, or disposes of otherwise than in the ordinary way of this trade any property which he has obtained on credit and has not paid for, unless the Court is satisfied that he had no intent to defraud. 16. If, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he has made any gift, sale, delivery, transfer, mortgage of, or any charge on his property, unless the Court is satisfied that he had no intent to defraud. 17. If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or bankruptcy. 18. If, after the presentation of any bankruptcy petition by or against him, he quits or attempts to quit the Island, unless the Court is satisfied that he had no intent to defraud.

Punishment of persons removing, etc., property of bankrupt. 6. If any person, after the debtor who is subsequently adjudged bankrupt, or within twelve months next before such presentation, removes or conceals or causes to be removed or concealed, either for his own benefit or for the benefit of such debtor or of any other person, any part of the property of such debtor which ought by law to be divided amongst his creditors, such person shall be guilty of an offence, and on conviction thereof shall be liable to be imprisoned for any term not exceeding seven years, with or without hard labour, unless the Court is satisfied that he had no intent to defraud.

False claims, declarations, etc., against bankrupt. 7. If after the presentation of a bankruptcy petition by or against any debtor who is subsequently adjudged bankrupt, any person either in his own behalf or in behalf of any other party wilfully and with intent to defraud makes any false claim, declaration, or statement of account which is untrue materially he shall be guilty of an offence punishable with imprisonment for any term not exceeding three years, with or without hard labour.

Punishment of trustee for concealment etc., of affairs of bankrupt. 8. Whoever being a trustee shall, in any report or statement relating to the affairs of any person who has been adjudged bankrupt, wilfully make any material omission, or conceal or withhold any information or matter tending to show the true condition of the affairs of such person or the circumstances of the bankruptcy, or shall in any way assist any person to commit any of the offences in this Law mentioned, then in every such case such trustee shall be guilty of an offence punishable with imprisonment for any term not exceeding seven years, with or without hard labour.

Repeal. 9. The enactments mentioned in the first column of the Schedule to this Law are hereby repealed to the extent appearing in the second column of the Schedule.

Schedule.

Ottoman Commercial Code.

Ottoman Penal Code.

Article 288 and official note thereto; Paragraph 3 of Article 290; Articles 291, 292, 293, and 294.
Articles 231 and 232.

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